

Cbs1mer1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

11 CR 576 (WHP)

6 JOSHUA MEREGILDO, MELVIN  
7 COLON, EARL PIERCE, and  
8 NOLBERT MIRANDA,

9 Defendants.  
10 -----x

11 New York, N.Y.  
12 November 28, 2012  
13 9:56 a.m.

14 Before:

15 HON. WILLIAM H. PAULEY III,

16 District Judge

17 APPEARANCES

18 PREET BHARARA  
19 United States Attorney for the  
20 Southern District of New York  
21 NOLA HELLER  
22 ADAM FEE  
23 SANTOSH ARAVIND  
24 Assistant United States Attorneys

25 WINSTON LEE  
26 YING STAFFORD  
27 Attorneys for Defendant Meregildo

28 MITCHELL DINNERSTEIN  
29 ANTHONY CECUTTI  
30 Attorneys for Defendant Colon

31 FLORIAN MIEDEL  
32 AARON MYSLIWIEC  
33 Attorneys for Defendant Pierce

Cbs1mer1

1  
2 APPEARANCES (Continued)  
34 GARY BECKER  
ALEX LESMAN  
5 Attorneys for Defendant Miranda6 ALSO PRESENT:  
Paralegal Specialist Darci Brady  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Cbs1mer1

1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: All right. Good morning to everyone.

4 Overnight I received an e-mail submission from  
5 Mr. Becker and a letter from Mr. Lee following up on the  
6 discussion that we had yesterday at the conclusion of closing  
7 arguments.

8 First, with respect to Mr. Lee's application, after  
9 reviewing the transcript and considering his application, I  
10 think I'm going to deny his motion for a mistrial, but I am  
11 going to give the jury a curative instruction. Mr. Lee, I  
12 propose to tell the jury the following:

13 During her rebuttal, Ms. Heller stated that the cell  
14 site evidence put Mr. Meregildo at the scene of the crime. I  
15 instruct you that if you credit the testimony of Special Agent  
16 Perry, the cell site records show only that Mr. Meregildo's  
17 cellular telephone was in the coverage area of the cell tower  
18 at the time the calls were placed.

19 MR. LEE: Your Honor, that's fine with us. Thank you.

20 THE COURT: All right. Now turning to Mr. Becker's  
21 argument concerning his request for a mistrial or curative  
22 instruction based on portions of the government's summation and  
23 rebuttal summation. Specifically, Miranda alleges that  
24 comments by the government, arguing that he was a member of the  
25 Courtlandt Avenue Crew, impermissibly amended the indictment or

Cbs1mer1

1 constituted a variance in the government's theory of proof.

2 But Miranda is charged with both the narcotics and racketeering  
3 conspiracies, and the argument that Miranda is a part of the  
4 Courtlandt Avenue Crew is consistent with those charges. Thus,  
5 the government's arguments were proper. Evidence and argument  
6 that Miranda was a critical member of the drug business for the  
7 Courtlandt Avenue Crew, that he didn't sell for T-Money, and  
8 instead went in on purchases with him, that he used the crew's  
9 dealers to make money, and that he was part of the crew for the  
10 drug conspiracy, to name just a few examples that Mr. Becker  
11 cited in his e-mail to the court, are entirely proper and  
12 consistent with both the indictment and this court's charge to  
13 the jury. So Mr. Miranda's application is denied.

14 MR. BECKER: Your Honor, if I may just briefly remark  
15 on the court's ruling.

16 Count One of the indictment, which is, of course, the  
17 substantive racketeering count, charges three of the four  
18 defendants in this case with being members of the enterprise.  
19 It does not charge Mr. Miranda with being a member of the  
20 enterprise.

21 Count Two, which is the racketeering conspiracy,  
22 nowhere contains the word "member," I don't believe. He's not  
23 charged with being a member of this enterprise.

24 Not only did the government tell the jury that he was  
25 a member of this enterprise, the Courtlandt Avenue Crew, the

Cbs1mer1

1 enterprise identified in the indictment; he told the jury that  
2 Mr. Miranda was a crucial member of the enterprise. That is  
3 inaccurate as a matter of fact and it's inaccurate as a matter  
4 of law, because the grand jury didn't charge him with being a  
5 member of the enterprise. No one listening to that summation  
6 could conclude anything other than that Mr. Miranda, like his  
7 co-defendants, were members of the enterprise. And indeed,  
8 Mr. Fee said -- and this is not only improper because he's not  
9 charged, but I think it constitutes an amendment of the  
10 indictment -- that Mr. Miranda was one half of the enterprise,  
11 the older men were one half, T-Money, Miranda and Pierce were  
12 one half. They supplied the drugs to the foot soldiers.  
13 That's not anywhere in the indictment, Judge, and we moved for  
14 a bill of particulars, I believe, and it was denied.

15 And what Ms. Heller did, respectfully, that I think  
16 was most improper -- and it really put a pointed dagger into my  
17 whole defense, improperly, was that she told the jury that,  
18 notwithstanding what Mr. Becker said, what Mr. Miranda did and  
19 what was the common purpose -- and this is at page 6181. "They  
20 all wanted to get together on their turf, exclusive turf, and  
21 sell drugs and make money. That was their common purpose."  
22 That's at 6181, lines 16 to 19. "That was their common  
23 purpose. This is not T-Money's band. It was all their band."  
24 What she was saying to the jury is that if you're out on  
25 Courtlandt Avenue and your goal is to make money, then you're

Cbs1mer1

1 part of this conspiracy. That's the only fair reading of it,  
2 Judge, and that is outrageous. That's not what this conspiracy  
3 is. Every -- there's evidence galore in this case that this  
4 indictment was about a crew that T-Money put together and they  
5 worked for him on a contingent basis, they had an exclusive  
6 arrangement, and I suggest to you that the reason the  
7 government didn't charge Mr. Miranda in Count One is because  
8 it's clear from the evidence that he was not part of that crew.  
9 Anthony Crocker said he was competition. Competition. Now to  
10 the extent that he somehow aided the crew or assisted them or  
11 did anything that the government says made him part of the  
12 conspiracy, that's one thing, but to say, as Mr. Fee did, that  
13 he was a crucial member of the enterprise and for Ms. Heller to  
14 say that the conspiracy is not what Mr. Becker said but rather,  
15 if you're out there on Courtlandt Avenue trying to make money,  
16 you're part of the conspiracy, you're -- the court admonished  
17 the government the other day that that's not the conspiracy.  
18 And yet that's what Ms. Heller argued.

19 So if the court is not going to grant a mistrial, I  
20 respectfully submit and request that there be a curative -- two  
21 curative instructions. One, that Mr. Fee told you that -- in  
22 words to this effect: Mr. Fee told you in his opening that  
23 Mr. Miranda was a member of the enterprise, indeed as a crucial  
24 member, and I instruct you that Mr. Miranda is not charged with  
25 being a member of the enterprise. The members of the

Cbs1mer1

1 enterprise are charged in Count One. Further, ladies and  
2 gentlemen of the jury, Ms. Heller told you that the conspiracy  
3 in this case is, if you're out there on the streets of  
4 Courtlandt area selling drugs, you're a member of the  
5 conspiracy, and that is an inaccurate statement of law.

6 MR. FEE: Your Honor, I think, given your ruling,  
7 there really isn't much of a response required, but Mr. Becker,  
8 respectfully, has grossly mischaracterized what was actually  
9 said to this jury. I'll quote Mr. Becker's leading example in  
10 his e-mail, which your Honor addressed, before he stood up and  
11 spoke. Mr. Becker writes: "In at least one instance at  
12 page 5848, line 19, Mr. Fee stated that Mr. Miranda was a  
13 'critical member' of the charged criminal enterprise." That's  
14 what Mr. Becker says.

15 I will read from the record at the portion he cites,  
16 but I'll read the full sentence:

17 "Earl Pierce and Nolbert Miranda --" this is during  
18 the summation "-- became critical members of this booming drug  
19 business." He was not called a member of the enterprise at any  
20 point during the summation.

21 Every single cite, as your Honor touched on, was  
22 talking about the drug conspiracy, the racketeering conspiracy.  
23 Your Honor, I concluded -- and quite frankly, I'm surprised to  
24 hear from Mr. Becker on this point because we were attentive to  
25 this issue, we knew Mr. Becker was going to be attentive to the

Cbs1mer1

1 issue, the court has been attentive to this issue. I  
2 concluded -- really the only law I did in the summation,  
3 page 5905, beginning at line 8 -- I won't read all of it, but I  
4 say, "Let's turn to the racketeering and the racketeering  
5 conspiracy counts. For Count One -- that's the substantive  
6 racketeering count -- you have to find that Meregildo, Colon,  
7 and Pierce -- those three defendants are charged in that  
8 count." Then Mr. Becker objects. After he objects, I clarify  
9 again: "The murders and assaults and attempted murders charged  
10 against Pierce, Meregildo, and Colon are also predicated acts  
11 relating to those defendants."

12 5906: "Count Two is a racketeering conspiracy, and  
13 for this you have to find that Meregildo, Colon, Pierce, and  
14 Miranda each agreed to participate."

15 And your Honor, I went cite by cite through what  
16 Mr. Becker cited in his letter. He was never called a member.  
17 It's simply -- it's borderline frivolous, the request he's  
18 making.

19 MR. BECKER: Your Honor, respectfully, if Mr. Fee  
20 would -- if I may read one paragraph, because it's critical for  
21 the record.

22 THE COURT: You may read it, but then you're going to  
23 conclude because --

24 MR. BECKER: Of course, your Honor. Of course, your  
25 Honor. And what I was respectfully saying is that it is the

Cbs1mer1

1 government that has misstated the record.

2 This is at 5847, beginning line 12: "As you know,  
3 this case is about the Courtlandt Avenue Crew." And I'll pause  
4 now and just remind the court that that's the charge they're  
5 talking about. "That's what it's called in the indictment."  
6 I'm reading again now. I'm quoting. "That's what it's called  
7 in the indictment, but it never had just one name on the  
8 street. At its core, the core of the enterprise, at its core,  
9 at its essence, this crew is made up of two parts. First, it  
10 was made up of grown men on Courtlandt Avenue, older, more  
11 experienced drug dealers, men like T-Money, Terry Harrison, men  
12 like Earl Pierce and Nolbert Miranda." So right there he's  
13 telling the jury that Mr. Miranda is at the core of this  
14 enterprise.

15 He then goes on to say: "These older men supplied  
16 drugs to young dealers on Courtlandt Avenue, took back profits  
17 from the drug sales, and sometimes got involved in firearms or  
18 violence when the business was threatened. The second piece of  
19 the Courtlandt Avenue Crew was a gang made up of younger men on  
20 Courtlandt Avenue. This was GFC, then it became OGFC, or OG,  
21 as you've heard. First, the GFC gang members were the foot  
22 soldiers." He goes on to say that "they did the hand-to-hand  
23 sales of drugs on the street, they committed shootings at rival  
24 gang members, and they sometimes committed murder at the  
25 request of the older men in this crew," who he just identified

Cbs1mer1

1 as Nolbert Miranda.

2 Now if that isn't putting him into the enterprise, as  
3 charged in Count One, I don't know what is. It just defies  
4 credulity to argue otherwise, Judge. You know, for Mr. Fee to  
5 point: Well, I told him he's not charged in Count One, he's  
6 charged in Count Two, that's legalese. This is plain English,  
7 what I just read, plain English. And we can stick our heads in  
8 the sand, respectfully, and make believe he didn't say it. I  
9 read verbatim, and I defy anyone to say that he wasn't arguing  
10 right there that Mr. Miranda was a member of the enterprise.  
11 And he's not charged with that, Judge. And so I renew my  
12 application.

13 MR. FEE: Your Honor, just briefly, that's  
14 appropriate. He's an associate of this racketeering  
15 enterprise. He's charged as being a conspirator in the  
16 enterprise. There's nothing in there that's inappropriate, and  
17 if it was so obvious, Mr. Becker never objected, didn't object  
18 afterwards, didn't object until -- in fact, he didn't even  
19 object to that portion after Ms. Heller's rebuttal when he  
20 first raised this type of argument. It was only in his e-mail  
21 and really today when he articulates this. Your Honor, we  
22 don't think there's any basis for an instruction at this point.

23 THE COURT: All right. The defendant Miranda's  
24 application for a curative instruction or a mistrial is again  
25 denied.

Cbs1mer1

1 Now I want to turn to two quick things before I bring  
2 the jury out.

3 First, the exhibit list. The master exhibit list was  
4 handed up to me, and I presume that all counsel have reviewed  
5 it. In my view, at a bare minimum, the exhibit list should  
6 reflect a particular exhibit was a photo.

7 So for example, Exhibit 11, Kevin Pinero. Now let's  
8 be a little more descriptive, okay?

9 Second, if it's a photo, it should be identified as a  
10 photo. If it's a surveillance video, some reference to the  
11 location should be indicated. Exhibits 516 through 529,  
12 location photos. Bullets. How about a caliber? Lab report,  
13 620. What lab report? 1200, we know what Exhibit 1200 is.  
14 We've seen it about a hundred times. But how about, for the  
15 sake of the jury, something other than map blowup. It's an  
16 aerial photograph of the certain places of the Jackson Houses.

17 And then defendant's exhibits, photographs. Are these  
18 the basketball team photographs? Some description. I think  
19 that can easily be done.

20 MR. BECKER: Your Honor, yes. I agree with what your  
21 Honor said, and I had briefly discussed identifying one or more  
22 of the photographs with the government. I guess it didn't get  
23 solidified. They should all be identified as to what the  
24 photographs are.

25 I respectfully request as well, with respect to the

Cbs1mer1

1 defense exhibits, 3534K and 3530S are identified as proffer  
2 agreements. It should be of which cooperator.

3 THE COURT: Of course.

4 MR. BECKER: And --

5 THE COURT: 3522A, report.

6 MR. BECKER: Yes. It should be -- I'm sure the  
7 government and the defense will work it out.

8 THE COURT: Right. Let's just make it a little more  
9 descriptive.

10 MR. BECKER: Yes.

11 Same with Defense Exhibit --

12 THE COURT: The ones I gave were only emblematic,  
13 okay?

14 MR. BECKER: Examples. Okay. Thank you.

15 THE COURT: Now, you know, I'm not going to exercise  
16 my discretion and experiment by offering the chart that I  
17 proposed yesterday because the government objects to them.  
18 We'll see what happens during the course of deliberations. But  
19 I want the record to be clear that I tried to come up with  
20 something that would be instructive to the jury. Given the  
21 fact that the jury charge currently stands 25,878 words, it's  
22 nearly the size of Deuteronomy, from which the oath of a  
23 federal judge is derived. And it's longer than virtually  
24 almost every book in the Bible. It's one and a half times  
25 longer than the Book of Job.

Cbs1mer1

1 MR. BECKER: Your Honor --

2 THE COURT: And it would have been much longer had I  
3 accepted all of the proposals from the government and defense  
4 counsel.

5 MR. BECKER: Your Honor, every ruling that the court  
6 has made in this case was made after considering the views of  
7 the government and the defense. There was never a requirement  
8 that the government and the defense be in accord before the  
9 court ruled as to what it thought was appropriate. The defense  
10 here -- I'm sure I'll be corrected if I'm mistaken. The  
11 defense here endorses the court's flow charts and believes they  
12 should be presented, and I respectfully suggest that the  
13 government's agreement should not be required.

14 THE COURT: It's not required.

15 MR. BECKER: Well, I understand, your Honor's  
16 discretion --

17 THE COURT: But caution is the best avenue for a  
18 court, especially given the fact that this trial consumed eight  
19 weeks. If it was a one-week trial, I'd just take the gamble.  
20 And quite frankly, we'll see what kind of notes we receive from  
21 the jury, because we may be right back to resorting to the  
22 charts later.

23 So are there any other issues before I bring the jury  
24 out and begin reading what, under conventional writing  
25 standards, is beyond a short story and into the range of a

Cbs1mer1

1 novel? It only takes 25,000 words to have a novel.

2 MR. BECKER: One issue. Page 5 of the verdict sheet.  
3 It is item 13.2.

4 THE COURT: Go ahead.

5 MR. BECKER: And that asks the jury, assuming they  
6 found the defendant they're considering guilty of Count  
7 Thirteen, the defendant, to be found guilty of Thirteen, had to  
8 either have personal involvement with or it was reasonably  
9 foreseeable to him that the narcotics conspiracy involved crack  
10 cocaine. I request that rather than say "have personal  
11 involvement with," because if you're in a conspiracy, you have  
12 personal involvement with the conduct, arguably, and the jury  
13 might believe that, if you say "personally distributed or it  
14 was reasonably foreseeable to him that the narcotics conspiracy  
15 involved crack cocaine." So either he's accountable for his  
16 own conduct, his own distribution, or whatever was reasonably  
17 foreseeable to him that was involved in the narcotics  
18 conspiracy.

19 MR. MIEDEL: Your Honor, for some reason we don't seem  
20 to have the most recent version of the verdict sheet. I'm just  
21 wondering if we could get a copy of it.

22 MR. BECKER: And your Honor, the request that I made I  
23 see is actually -- has equal applicability to 13.1 as well as  
24 13.2.

25 THE COURT: What's the government's view?

Cbs1mer1

1 MS. HELLER: We're just looking at the language in the  
2 charge.

3 Your Honor, we oppose that. Changing involvement in  
4 distribution is too narrow a change. You can have personal --  
5 you can participate in a conspiracy if you keep drugs in your  
6 house for members of the conspiracy or even if you keep guns in  
7 your house for members of the conspiracy and not distribute the  
8 drugs. So we think it's perfect as it is.

9 MR. BECKER: But your Honor, that's my point. The  
10 second portion talks about being held accountable as a  
11 conspirator for the conduct of co-conspirators provided it was  
12 reasonably foreseeable, and I don't object to that because  
13 that's an accurate statement of the law, but the need -- the  
14 court here is obviously trying to differentiate between two  
15 bases by which they may hold them accountable for the amount.  
16 One is if he personally sells it, the other is if he doesn't  
17 personally sell it but it was reasonably foreseeable to -- he  
18 was a member of the conspiracy and it was reasonably  
19 foreseeable to him that the conspiracy involved that amount.  
20 That's all I'm asking for.

21 MS. HELLER: Distribution does not -- it's also  
22 possess with intent to distribute. Involvement encapsulates  
23 both of the parts of the charged offense. We think it should  
24 be involvement.

25 MR. BECKER: Fine. So personally distributed or

Cbs1mer1

1 possessed with intent to distribute that amount or it was  
2 reasonably foreseeable. I just want the two concepts to be  
3 made more appropriately distinct.

4 THE COURT: I'll think about it. We'll be taking a  
5 recess before we get to the verdict sheet.

6 MR. BECKER: All right. Fine.

7 THE COURT: Anything else?

8 MR. FEE: Just briefly, your Honor, the exhibit list,  
9 which we need to revise, is it your intention to hand that to  
10 the jury immediately after the charge or will we have some  
11 time?

12 THE COURT: You'll have some time.

13 MR. FEE: Thank you, your Honor.

14 THE COURT: All right. Let's bring in the jury.

15 MS. HELLER: Your Honor, if anyone needs to use the  
16 facilities during the charge, are we free to leave to do that  
17 or not?

18 THE COURT: We're going to take a break.

19 MS. HELLER: I know. I just am not sure if I  
20 personally may be able to --

21 THE COURT: If you need to step out, you can.

22 MS. HELLER: Thank you, your Honor.

23 (Jury present)

24 THE COURT: Good morning, members of the jury.

25 THE JURORS: Good morning, Judge.

Cbs1mer1

1                   THE COURT: Members of the jury, thanks once again for  
2 your punctuality. I'm sorry that we're starting a little bit  
3 late. All the blame is mine. It has nothing to do with  
4 counsel or the parties, so don't fault them.

5                   Before I turn to my final instructions on the law,  
6 yesterday you heard the concluding day of closing arguments,  
7 and during her rebuttal, Ms. Heller stated that the cell site  
8 evidence put Mr. Meregildo at the scene of the crime. I  
9 instruct you that if you credit the testimony of Special Agent  
10 Perry, the cell site records show only that Mr. Meregildo's  
11 cellular telephone was in the coverage area of the cell tower  
12 at the time the calls were placed. And of course, I reiterate  
13 to you, as I have on a number of occasions, that closing  
14 arguments are not evidence. They're argument.

15                  Now at this time I'm going to ask my deputy to  
16 distribute to each of you a binder that contains a copy of the  
17 charge.

18                  (Continued on next page)

CBS3MER2

Jury Charge

1                   THE COURT: You may open your binders. There is a  
2 table of contents in the front. That is only an aid for you  
3 later, because I will permit you to take the copy of the charge  
4 into the jury room with you to have during your deliberations.

5                   Please, do not turn ahead in the charge as I read it  
6 or look at anything else that may be in the binder.

7                   So members of the jury -- I'm now at page two of the  
8 charge. Members of the jury, my charge to you on the law is  
9 lengthy and covers many points. Some people find it easier to  
10 understand something if they can read along. So each of you  
11 has your own copy if you would like to follow along. In any  
12 event, you must listen closely as I read the charge.

13                  We're now approaching the most important part of this  
14 case, your deliberations. You've heard all the evidence in the  
15 case as well as the final arguments of the lawyers for the  
16 parties. Before you retire to deliberate, it is my duty to  
17 instruct you as to the law. It is your duty to accept these  
18 instructions of law and apply them to the facts as you  
19 determine them.

20                  Regardless of any opinion that you may have as to what  
21 the law may be or ought to be, it's your sworn duty to follow  
22 the law as I give it to you. If any attorney has stated a  
23 legal principle different from any that I state to you in my  
24 instructions, it is my instructions that you must follow.

25                  In listening to these instructions now and reviewing

CBS3MER2

Jury Charge

1 them later, you should not single out any particular  
2 instruction as alone stating the law, but you should instead  
3 consider my instructions as a whole.

4 Your duty is to decide the fact issues in the case.  
5 You are the sole and exclusive judges of the facts. You pass  
6 upon the weight of the evidence, you determine the credibility  
7 of the witnesses, you resolve such conflicts as there may be in  
8 the testimony, and you draw whatever reasonable inferences you  
9 decide to draw from the facts that you determine them.

10 In determining the facts, you must rely on your own  
11 recollection of the evidence. None of what the lawyers have  
12 said in their opening statements, in their closing arguments,  
13 or through their objections is evidence. You should bear in  
14 mind particularly that a question put to a witness or a comment  
15 made to a witness is never evidence. It is only the answer in  
16 the context of the question that is evidence. You may not  
17 consider any answer that I directed you to disregard.

18 I remind you that nothing I've said during the trial  
19 or will say during these instructions is evidence. Similarly,  
20 the rulings I've made during the trial are not any indication  
21 of my views of what your decision should be.

22 Now, the law presumes a defendant to be innocent of  
23 all the charge against him. This presumption of innocence  
24 alone is sufficient to acquit a defendant. The defendants,  
25 Joshua Meregildo, Melvin Colon, Earl Pierce, and Nolbert

CBS3MER2

Jury Charge

1 Miranda, have each pleaded not guilty to the charges. As a  
2 result of each of their pleas of not guilty, the burden is on  
3 the government to prove guilt beyond a reasonable doubt. This  
4 presumption was with each defendant when the trial began, it is  
5 with them now, and it remains with them throughout your  
6 deliberations until such time, if ever, after a careful and  
7 impartial consideration of all the evidence in this case, you  
8 are convinced that the government has proved each defendant  
9 guilty beyond a reasonable doubt. The burden never shifts to a  
10 defendant for the simple reason that the law never imposes on a  
11 defendant in a criminal case the burden or duty of testifying  
12 or calling any witness or locating or producing any evidence.

13 Now, I've said that the government must prove a  
14 defendant guilty beyond a reasonable doubt. The question  
15 naturally arises, what is a reasonable doubt? The words almost  
16 define themselves. It is a doubt based in reason and arising  
17 out of the evidence in the case, or the lack of evidence. It  
18 is a doubt that a reasonable person has after carefully  
19 weighing all of the evidence in the case.

20 Reasonable doubt is a doubt that appeals to your  
21 reason, your judgment, your experience and your common sense.  
22 If, after a faithful and impartial consideration of all the  
23 evidence, you can candidly and honestly say that you were not  
24 satisfied with the guilt of a defendant, that you do not have  
25 an abiding and firm belief of the defendant's guilt; in other

CBS3MER2

Jury Charge

1 words, if you have such a doubt as would reasonably cause a  
2 prudent person to hesitate to act in a matter of importance in  
3 his or her own affairs, then you have a reasonable doubt. And  
4 in that circumstance, it is your duty to acquit.

5 On the other hand, if, after a fair and impartial  
6 consideration of all the evidence, you can candidly and  
7 honestly say that you do have an abiding belief of the  
8 defendant's guilt, a belief that a prudent person would be  
9 willing to act on in a matter of importance in his or her own  
10 affairs, then you have no reasonable doubt, and under such  
11 circumstances, it is your duty to convict.

12 One final word on this subject: Reasonable doubt is  
13 not whim or speculation. It is not an excuse to avoid the  
14 performance of an unpleasant duty. Nor is it sympathy for one  
15 party or the other. Beyond a reasonable doubt does not mean a  
16 positive or mathematical certainty. The government has met its  
17 burden if the guilt of the defendant is established beyond a  
18 reasonable doubt, not beyond all possible doubt.

19 Now, the evidence in this case consists of the  
20 testimony of the witnesses, the exhibits received in evidence,  
21 and the stipulations between parties.

22 Exhibits that have been marked for identification but  
23 not received may not be considered by you as evidence. Only  
24 those exhibits received may be considered as evidence.

25 Similarly, you are to disregard any testimony that

CBS3MER2

Jury Charge

1 I've stricken.

2 Anything you may have seen or heard about this case  
3 outside the courtroom is not evidence and must be entirely  
4 disregarded.

5 There are two types of evidence that you may consider  
6 in reaching your verdict: Direct evidence and circumstantial  
7 evidence. Direct evidence is evidence that proves a disputed  
8 fact directly. For example, where a witness testifies to what  
9 he or she saw, heard, or did, that's called direct evidence.  
10 Circumstantial evidence is evidence that tends to prove a  
11 disputed fact by proof of other facts.

12 To give a simple example, you may remember the story  
13 of Robinson Crusoe who was marooned on a deserted island. He  
14 spent years thinking he was alone until, one day, as he walked  
15 along the beach, he noticed large footprints in the sand.  
16 Because his feet were too small to have made them, Robinson  
17 concluded that somebody else must have left the footprints even  
18 though he had not seen anyone else. In other words, he had no  
19 direct evidence of that fact. But it would be reasonable for  
20 him to conclude from the footprints on the beach that in fact  
21 he was not alone.

22 That's all there is to circumstantial evidence. Using  
23 your reason and experience, you infer from established facts  
24 the existence or the non-existence of some other fact.

25 The law makes no distinction between direct and

CBS3MER2

Jury Charge

1 circumstantial evidence. Circumstantial evidence is of no less  
2 value than direct evidence, and you can consider either or both  
3 and can give them such weight as you conclude is warranted.

4 In their arguments, the parties have asked you to  
5 infer on the basis of your reason, experience, and common sense  
6 from one or more established facts the existence of some other  
7 fact. The process of drawing inferences from facts in evidence  
8 is not a matter of guesswork or speculation. An inference is a  
9 reasonable deduction or logical conclusion that you the jury  
10 are permitted to draw, but not required to draw, from the facts  
11 that have been established by either direct or circumstantial  
12 evidence. In drawing inferences, you should exercise your  
13 common sense.

14 In this case, you've heard evidence in the form of  
15 stipulations. A stipulation is an agreement among parties  
16 that, if called, a witness would have given certain testimony.  
17 You must accept as true the fact that the witness would have  
18 given this testimony. However, it is for you to determine the  
19 effect to be given the testimony.

20 You've also heard evidence in the form of stipulations  
21 that contain facts that were agreed to be true. In such cases,  
22 you must accept those facts as true.

23 During the trial, I permitted the taking of notes by  
24 those of you who wish to do so. At the time I pointed out  
25 while I permitted the taking of notes, the court reporter takes

CBS3MER2

Jury Charge

1 down everything that's said in the courtroom and will read it  
2 back to you during your deliberations any portion of the  
3 transcript that you may ask for. I also advised you to be  
4 careful, because taking notes presents the further problem that  
5 doing so may divert your attention from some very important  
6 testimony given while you are taking notes.

7 As to those jurors who did take notes during the  
8 trial, I point out to you and your fellow jurors that notes are  
9 simply an aid to memory for the particular juror who takes the  
10 notes. Therefore, I instruct you that your notes are only a  
11 tool to aid your individual memory, and you should not compare  
12 your notes with other jurors in determining the content of any  
13 testimony or in evaluating the importance of any evidence.  
14 Further, those jurors who did not take notes should rely on  
15 their independent recollection of the evidence and not be  
16 influenced by the fact that another juror has taken notes.  
17 Your notes are not evidence, and are by no means a complete  
18 outline of the proceedings or a list of the highlights of the  
19 trial.

20 As you're considering the charges in the indictment,  
21 let me instruct you that if a specific event is alleged to have  
22 occurred on or about a certain date and the testimony or other  
23 evidence indicates that in fact it occurred on another date,  
24 that is permitted so long as there is a substantial similarity  
25 between the dates alleged in the indictment and the dates

CBS3MER2

Jury Charge

1 established by the testimony.

2 You had an opportunity to observe all of the  
3 witnesses. How do you evaluate the credibility of or  
4 believability of those witnesses? The answer is that you use  
5 your common sense. Was the witness candid, frank, and  
6 forthright? Or did the witness appear evasive as if he or she  
7 was trying to hide something?

8 How much you choose to believe a witness may be  
9 influenced by the witness's bias. Does the witness have a  
10 relationship with the government or a defendant that may affect  
11 the witness's testimony? Does the witness have some incentive,  
12 loyalty or motive that might cause the witness to shade the  
13 truth? Or does the witness have some bias, prejudice or  
14 hostility that may have caused the witness, consciously or not,  
15 to give you something other than a completely accurate account  
16 of the facts?

17 You are not required to accept testimony even though  
18 the testimony is uncontradicted and the witness's testimony is  
19 not challenged. You may decide because of the witness's  
20 bearing or demeanor or because of the inherent improbability of  
21 the testimony or for other reasons that the testimony is not  
22 worthy of belief.

23 If you find that a witness wilfully testified falsely,  
24 that is always a matter of importance that you should weigh  
25 carefully. If you find that any witness has lied under oath,

CBS3MER2

Jury Charge

1 you should view the testimony cautiously and weigh it with  
2 great care. It is, however, for you to determine how much of  
3 the witness's testimony, if any, you wish to believe.

4 Thus, there is no magical formula by which you can  
5 evaluate testimony. You determine for yourself every day and  
6 in a multitude of circumstances the reliability of statements  
7 made to you by others. You may consider the interest of any  
8 witness in the outcome of this case, and this is true  
9 regardless of who called or questioned the witness.

10 Indeed, the issue of credibility may, but need not, be  
11 decided in an all-or-nothing fashion. If you find that a  
12 witness testified falsely in one part, you still may accept his  
13 or her testimony in other parts, or you may disregard all of  
14 it. This is a determination entirely for you, the jury.

15 You've heard evidence that some of the witnesses made  
16 statements on earlier occasions that counsel have argued are  
17 inconsistent with the witness's testimony in this trial.  
18 Evidence of a prior inconsistent statement is not to be  
19 considered by you as affirmative evidence bearing on the guilt  
20 or non-guilt of the defendant you are considering. Rather,  
21 evidence of a prior inconsistent statement was placed before  
22 you for the limited purpose of helping you decide whether to  
23 believe that trial testimony of the witness who may have  
24 testified in a contradictory manner. If you find that the  
25 witness made an earlier statement that conflicts with his or

CBS3MER2

Jury Charge

1 her trial testimony, you may consider that fact in deciding how  
2 much of his or her trial testimony, if any, to believe.

3 Now, you may have heard evidence during this trial  
4 that witnesses have discussed the facts of the case and their  
5 testimony with the lawyers before the witness appeared in  
6 court. Although you may consider that fact when you are  
7 evaluating a witness's credibility, I should tell you that  
8 there is nothing either unusual or improper about a witness  
9 meeting with lawyers before testifying so that the witness can  
10 be aware of the subjects he will be questioned about, focus on  
11 those subjects, and have the opportunity to review relevant  
12 exhibits before being questioned about them.

13 Again, the weight you give to the fact or the nature  
14 of the witness' preparation for his or her testimony and what  
15 inferences you draw from such preparation are matters  
16 completely within your discretion.

17 You've heard testimony of law enforcement witnesses.  
18 The fact that a witness may be employed as a law enforcement  
19 official or employee does not mean that his testimony deserves  
20 more or less consideration or greater or lesser weight than  
21 that of an ordinary witness.

22 In this context, defense counsel is allowed to try to  
23 attack the credibility of such a witness on the ground that his  
24 or her testimony may be colored by a personal or professional  
25 interest in the outcome of the case.

CBS3MER2

Jury Charge

1           It's your decision, after reviewing all the evidence,  
2 whether to accept the testimony of a law enforcement witness,  
3 as it is with every other type of witness, and to give to the  
4 testimony the weight you find it deserves.

5           You've heard from witnesses who testified that they've  
6 been involved in planning and carrying out certain of the  
7 crimes charged in the indictment. The government has argued,  
8 as it is permitted to do, that it must take its witnesses as it  
9 finds them, and that people who take part in criminal activity  
10 may have the knowledge required to show criminal behavior by  
11 others. For those very reasons, the law allows the use of  
12 cooperating witness testimony. Indeed, it is the law in  
13 federal courts that such testimony may be enough in itself for  
14 conviction if the jury believes that the testimony establishes  
15 guilt beyond a reasonable doubt.

16           However, because of the interest a cooperating witness  
17 may have in testifying, his testimony should be scrutinized  
18 with special care and caution. You should scrutinize it  
19 closely to determine whether it is colored in such a way as to  
20 place guilt on a defendant to further the witness's own  
21 interest. The fact that a witness is a cooperator can be  
22 considered by you as bearing on his credibility. Like the  
23 testimony of any other witness, cooperating witness testimony  
24 should be given such weight as it deserves in light of the  
25 facts and circumstances before you. If you find that a witness

CBS3MER2

Jury Charge

1 testified falsely in one part, you still may accept his  
2 testimony in other parts or you may disregard all of it.

3 You should ask yourselves whether a cooperating  
4 witness would benefit more by lying or by telling the truth.  
5 Did the witness believe that his interests would be best served  
6 by testifying falsely, or by testifying truthfully? Did this  
7 motivation color his testimony? If you find that the testimony  
8 was false, you should reject it. However, if you're satisfied  
9 that the witness told the truth, you should accept it as  
10 credible and act on it accordingly.

11 Finally, you've heard testimony from cooperating  
12 witnesses who have pleaded guilty to charges arising in part  
13 out of the same facts that are at issue in this case. Draw no  
14 conclusions or inferences of any kind about the guilt of the  
15 defendants on trial merely from the fact that a prosecution  
16 witness pleaded guilty to similar charges. That witness's  
17 decision to plead guilty was a personal decision about his own  
18 guilt. It in no way changes the presumption of innocence that  
19 applies to each defendant who is on trial here, a presumption  
20 that remains with them throughout the trial and into your jury  
21 deliberations, unless and until you conclude that the  
22 government has proven a particular defendant's guilt by  
23 competent evidence beyond a reasonable doubt.

24 You've also heard testimony of a witness who testified  
25 under a grant of immunity, which means that witness's testimony

CBS3MER2

Jury Charge

1 may not be used against her in any criminal case except a  
2 prosecution for perjury, or otherwise failing to comply with  
3 the immunity order. It is perfectly acceptable for the  
4 government to request orders of immunity, and it is entitled to  
5 call witnesses who are subject to these orders. However, like  
6 cooperating witness testimony, the testimony of a witness who  
7 has been granted an order of immunity should be examined with  
8 greater care than the testimony of an ordinary witness. You  
9 should scrutinize it closely to determine whether it is colored  
10 in such a way as to place guilt on a defendant to further the  
11 witness's own interests; for such a witness, confronted with  
12 the realization that she can win her own freedom by helping to  
13 convict another, has motive to falsify her testimony. On the  
14 other hand, if you believe it to be true and determine to  
15 accept the testimony, you may grant it such weight, if any, as  
16 you believe it deserves.

17 You may not draw any inference, favorable or  
18 unfavorable, from the fact that any person in addition to the  
19 defendants is not on trial here. You also may not speculate as  
20 to the reasons why other persons are not on trial. Those  
21 matters are wholly outside your concern and have no bearing on  
22 your function as jurors.

23 You've heard testimony from expert witnesses in this  
24 case. An expert witness is a witness who, by education or  
25 experience, has acquired learning or experience in a science or

CBS3MER2

Jury Charge

1 a specialized area of knowledge. Such a witness is permitted  
2 to give his opinions as to relevant matters in which he  
3 professes to be expert and give his reasons for that opinion.  
4 Expert testimony is presented to you on the theory that someone  
5 who is experienced in the field can assist you in understanding  
6 the evidence or in reaching an independent decision on the  
7 facts.

8 Your role in judging credibility applies to experts as  
9 well as to other witnesses. You should consider the expert  
10 opinions and give them as much or as little weight as you think  
11 they deserve. If you should decide that the opinion of an  
12 expert was not based on sufficient education or experience or  
13 on sufficient data, or if you should conclude that the  
14 trustworthiness or credibility of the witness is questionable  
15 for any reason, or if his opinion was outweighed in your  
16 judgment by other evidence in the case, then you may disregard  
17 the opinion of the expert entirely or in part.

18 On the other hand, if you find that the opinion of an  
19 expert is based on sufficient data, education, and experience,  
20 and the other evidence does not give you reason to doubt his  
21 conclusions, you would be justified in relying on such  
22 testimony.

23 You've heard testimony regarding the use of  
24 informants. There is nothing wrong or illegal with the  
25 government using these techniques. The use of informants is

CBS3MER2

Jury Charge

1 entirely lawful. Whether or not you approve of the use of  
2 informants to detect and investigate unlawful activity is not  
3 to enter into your deliberations in any way.

4 You may have heard reference to the fact that certain  
5 investigative techniques were not used by the government.  
6 There is no legal requirement that the government prove its  
7 case through any particular means. While you are to carefully  
8 consider the evidence adduced by the government, you are not to  
9 speculate as to why it used the techniques it did, or why it  
10 did not use other techniques. Law enforcement techniques are  
11 not your concern. Your concern is to determine whether, on the  
12 evidence or lack of evidence, a defendant's guilt has been  
13 proven beyond a reasonable doubt.

14 You heard testimony in this case about the evidence  
15 seized in connection with certain searches conducted by law  
16 enforcement officers. Evidence obtained from these searches  
17 was properly admitted in this case and may be properly  
18 considered by you. Whether you approve or disapprove of how  
19 the evidence was obtained should not enter into your  
20 deliberations, because I instruct you that the government's use  
21 of the evidence is entirely lawful. You must, therefore,  
22 regardless of your personal opinions, give this evidence full  
23 consideration along with all the other evidence in the case in  
24 determining whether the government has proven each defendant's  
25 guilt beyond a reasonable doubt.

CBS3MER2

Jury Charge

1                   The fact that the prosecution is brought in the name  
2 of the United States of America entitles the government to no  
3 greater consideration than that accorded to any other party to  
4 a case. By the same token, the government's entitled to no  
5 less consideration. All parties, both the government and the  
6 defendants, Joshua Meregildo, Melvin Colon, Earl Pierce, and  
7 Nolbert Miranda, stand as equals at the bar of justice.

8                   You may have heard the names of certain people during  
9 the course of the trial who did not testify. I instruct you  
10 that each party had an equal opportunity or lack of opportunity  
11 to call any of these witnesses. Therefore, you should not draw  
12 any inferences or reach any conclusions as to what they would  
13 have testified had they been called. Their absence should not  
14 affect your judgment in any way. I remind you that the law  
15 does not impose on a defendant the burden or duty of calling  
16 any witness or producing any evidence.

17                  The defendants in this case did not testify. Under  
18 our Constitution, a defendant has no obligation to testify or  
19 to present any evidence because it is the government's burden  
20 to prove a defendant guilty beyond a reasonable doubt. That  
21 burden remains with the government throughout the entire trial,  
22 and never shifts to a defendant. A defendant is never required  
23 to prove that he is not guilty. You may not attach any  
24 significance to the fact that a defendant did not testify. You  
25 may not draw any inference against a defendant because he did

CBS3MER2

Jury Charge

1 not take the witness stand. You may not consider this against  
2 any of the defendants in any way in your deliberations in the  
3 jury room.

4 Some of the exhibits that were admitted into evidence  
5 were in the form of demonstrative exhibits, including some  
6 diagrams and summaries. These demonstratives were admitted in  
7 place of or in addition to the underlying documents that they  
8 represent to save time and avoid unnecessary inconvenience.  
9 They are not themselves, however, direct evidence. It is the  
10 underlying evidence that determines what weight, if any, these  
11 demonstratives deserve. It is for you to decide whether they  
12 correctly present the information contained in the testimony  
13 and the exhibits on which they are based. You're entitled to  
14 consider them if you find that they assist you in analyzing and  
15 understanding the evidence.

16 Some exhibits were redacted. "Redacted" means that  
17 part of the document was taken out. You are to focus on those  
18 portions of exhibits that have been admitted into evidence.  
19 You should not consider any possible reason why parts of  
20 exhibits were deleted or redacted.

21 There has been evidence that a defendant made certain  
22 statements following his arrest. As with all witness  
23 testimony, it is for you to decide whether these statements  
24 were made, and, if you conclude they were made, what weight to  
25 give to those statements. I instruct you that in making those

CBS3MER2

Jury Charge

1 decisions you are to consider all the evidence about the  
2 statement, including the circumstances under which it may have  
3 been made, and to give the statement whatever weight you feel,  
4 if any, it deserves under the circumstances.

5 Whether you approve or disapprove of the taking or use  
6 of statements from arrested defendants may not enter your  
7 deliberations. I instruct you that the government's use of  
8 this evidence is entirely lawful.

9 The defendants, Joshua Meregildo, Melvin Colon, Earl  
10 Pierce, and Nolbert Miranda, are formally charged in an  
11 indictment. As I instructed you at the outset of this case,  
12 the indictment is a charge or accusation. It is not evidence  
13 or proof of the charge. Before you begin your deliberations,  
14 you will be provided with a copy of the indictment containing  
15 the charges.

16 With every criminal charge there are certain basic  
17 facts that the government must prove beyond a reasonable doubt  
18 before a defendant may be found guilty. These basic, necessary  
19 facts are called elements of the offense. I'm going to explain  
20 to you first in general terms and then in detail what the  
21 indictment charges against each defendant and what the  
22 essential elements of the charges are.

23 The indictment in this case contains 22 counts. There  
24 are three groups of charges in the indictment -- narcotics  
25 charges, firearms charges, and racketeering charges. We will

CBS3MER2

Jury Charge

1 turn first to the racketeering charges. Count one charges  
2 three defendants, Joshua Meregildo, Melvin Colon, and Earl  
3 Pierce, with conducting and participating in a racketeering  
4 enterprise referred to in the indictment as the Courtlandt  
5 Avenue Crew through a pattern of racketeering activity.

6 Count two charges all of the defendants, Joshua  
7 Meregildo, Melvin Colon, Earl Pierce, and Nolbert Miranda, with  
8 conspiring to participate in a racketeering enterprise.

9 The indictment alleges that counts three through 12  
10 were committed for the purpose of maintaining or increasing a  
11 particular defendant's position in the racketeering enterprise  
12 or for the promise of payment.

13 Specifically, counts three and four respectively  
14 charge Earl Pierce with conspiring to murder rival narcotics  
15 distributors and murdering Jason Correa on July 25, 2010.  
16 Count five and six respectively charge Joshua Meregildo with  
17 conspiring to murder Carrel Ogarro and murdering Carrel Ogarro  
18 on July 31, 2010. Count seven and eight respectively charge  
19 Melvin Colon with conspiring to murder Delquan Alston and  
20 murdering Delquan Alston on August 27, 2010. Counts nine and  
21 10 respectively charge Joshua Meregildo and Earl Pierce with  
22 conspiring to murder rival drug distributors and the assault  
23 and attempted murder of Tarean Joseph on September 13, 2010.  
24 Counts 11 and 12 respectively charge Melvin Colon with  
25 conspiring to murder rival gang members and the attempted

CBS3MER2

Jury Charge

1 murder of a rival gang member and the assault of Jing Bao Jiang  
2 on September 8, 2011.

3 The narcotics charges, narcotics-related charges begin  
4 with count 13, which charges Joshua Meregildo, Melvin Colon,  
5 Earl Pierce, and Nolbert Miranda with conspiring to distribute  
6 or possess with intent to distribute crack cocaine and  
7 marijuana.

8 The indictment alleges that counts 14 through 16 were  
9 committed during the drug conspiracy charged in count 13. As I  
10 will explain to you later, you can only consider these charges  
11 under certain circumstances. Count 14 charges Earl Pierce with  
12 murdering Jason Correa on July 25, 2010. Count 15 charges  
13 Joshua Meregildo with murdering Carrel Ogarro on July 31, 2010.  
14 And count 16 charges Melvin Colon with murdering Delquan Alston  
15 on August 27, 2010.

16 The firearms-related charges begin with count 17.  
17 Again, you can only consider these charges under certain  
18 circumstances that I will explain later. Count 17 through  
19 count 21 each allege firearm possession for crimes committed in  
20 aid of the racketeering enterprise. Count 22 alleges firearm  
21 possession during and in furtherance of the narcotics  
22 conspiracy.

23 Specifically, count 17 charges Earl Pierce with  
24 possessing, carrying, or using a firearm to murder Jason Correa  
25 or aiding and abetting the same. Count 18 charges Joshua

CBS3MER2

Jury Charge

1 Meregildo with possessing, carrying, or using a firearm to  
2 murder Carrel Ogarro, or aiding and abetting the same. Count  
3 19 charges Melvin Colon with possessing, carrying, or using a  
4 firearm to murder Delquan Alston, or aiding and abetting the  
5 same. Count 20 charges Joshua Meregildo and Earl Pierce with  
6 possessing, carrying, or using firearms to commit the assault  
7 and attempted murder on September 13, 2010, or aiding and  
8 abetting the same. Count 21 charges Melvin Colon with  
9 possessing, carrying, or using firearms during and in relation  
10 to or in furtherance of the conspiracy to murder rival gang  
11 members charged in count 11. And count 22 charges Joshua  
12 Meregildo, Melvin Colon, Earl Pierce, and Nolbert Miranda with  
13 possessing, carrying, or using firearms during and in relation  
14 to or in furtherance of the narcotics conspiracy charged in  
15 count 13.

16 To make my instructions on the law clear, I'm going to  
17 explain the law governing several of the charged crimes out of  
18 the order in which they appear in the indictment. I'm going to  
19 do this because several of the crimes bear on more than one  
20 count in the indictment. For example, the assault, attempted  
21 assault, and murder in aid of racketeering charges are charged  
22 as part of the illegal activity in racketeering counts one  
23 through five are predicate offenses to certain firearms  
24 charges. And are also charged as separate so-called  
25 substantive offenses.

CBS3MER2

Jury Charge

1                   Similarly, the narcotics conspiracy is charged as  
2 count 13, but is also charged as part of the illegal activity  
3 in racketeering act six, and is a predicate offense to certain  
4 murder and firearms charges. The crime of conspiracy is also  
5 relevant to more than one count. I'm therefore going to  
6 instruct you on the law governing these crimes first, and  
7 explain later how these basic definitions are to be applied by  
8 you in your deliberations on the earlier counts to which they  
9 are relevant.

10                  The indictment names four defendants who are on trial  
11 together. Your verdict as to each defendant must be determined  
12 separately with respect to him, and with respect to each  
13 separate element of each separate charge against that  
14 defendant, based solely on the evidence against him without  
15 regard to the guilt or lack of guilt of anyone else.

16                  In addition, some of the evidence in this case was  
17 limited to one defendant or introduced for a limited purpose.  
18 Let me emphasize that any evidence admitted solely against one  
19 defendant may be considered only against that defendant and may  
20 not in any respect enter into your deliberations on any other  
21 defendant. Also, any evidence admitted solely for a limited  
22 purpose may be considered only for that purpose and may not in  
23 any respect enter into your deliberations for any other  
24 purpose.

25                  The indictment charges three distinct murders. The

CBS3MER2

## Jury Charge

1 murder of Jason Correa, Carrel Ogarro, and Delquan Alston. The  
2 government has brought murder charges under more than one  
3 criminal statute or theory of criminal liability. Similarly,  
4 the government has brought firearms, assault, and attempted  
5 murder charges under more than one criminal statute. You will  
6 need to consider each charge and each defendant to determine  
7 whether the government has carried its burden of proof. During  
8 your deliberations, you must keep these charges distinct and  
9 separate as to each defendant. Each charge must be analyzed  
10 independently, and unless I instruct you otherwise, should have  
11 no bearing on any other charge.

12 In connection with certain charges in the indictment,  
13 which I'll discuss below, a defendant can be convicted under a  
14 theory of criminal liability known as aiding and abetting  
15 liability. Under this theory, it is not necessary for the  
16 government to show that a defendant himself personally  
17 committed the crime charged for you to find him guilty. This  
18 is because a person who aids, abets, counsels, commands,  
19 induces or procures the commission of a crime is just as guilty  
20 of that offense as if he committed it himself.

21 Accordingly, you may find a defendant guilty of the  
22 offenses charged in counts four, six, eight, 10, 12, 14, 15,  
23 16, 17, 18, 19, 20, 21, and 22 if you find beyond a reasonable  
24 doubt that the government has proven that another person  
25 actually committed the offense with which the defendant is

CBS3MER2

Jury Charge

1 charged, and that the defendant aided, abetted, counseled,  
2 commanded, induced or procured that person to commit the crime.

3 As you can see, the first requirement is that you find  
4 that another person has committed the crime charged.

5 Obviously, no one can be convicted of aiding and abetting the  
6 criminal acts of another if no crime was committed by the other  
7 person in the first place. But if you do find that a crime was  
8 committed, then you must consider whether the defendant you are  
9 considering aided, abetted, counseled, commanded, induced or  
10 procured the commission of the crime. If any of these things  
11 happened, we say that a person is an aider and abettor to the  
12 crime.

13 To aid or abet another to commit a crime, it is  
14 necessary that the defendant wilfully and knowingly associated  
15 himself in some way with the crime, and that he wilfully and  
16 knowingly seek by some act to help make the crime succeed.

17 Participation in the crime in question is willful if  
18 action is taken voluntarily and intentionally and with the  
19 specific intent to do something that the law forbids, or, in  
20 the case of a failure to act, with the specific intent to fail  
21 to do something that the law requires to be done. That is to  
22 say, with a bad purpose, either to disobey or to disregard the  
23 law.

24 The mere presence of the defendant where a crime is  
25 being committed, even coupled with knowledge by the defendant

CBS3MER2

Jury Charge

1 that a crime is being committed, or the mere acquiescence by  
2 the defendant in the criminal conduct of others, even with  
3 guilty knowledge, is not sufficient to establish that a  
4 defendant is an aider and abettor. An aider and abettor must  
5 have had some interest in the criminal venture and wished to  
6 bring about its success or completion.

7 If you find that the government has proven beyond a  
8 reasonable doubt that the defendant had an interest in the  
9 criminal venture, then the defendant is an aider and abettor  
10 and therefore is guilty of the offense you are considering.  
11 If, on the other hand, you find that the government has not  
12 proven this beyond a reasonable doubt, then the defendant is  
13 not an aider and abettor. And if you find that he did not  
14 personally commit the crime you are considering, you must find  
15 him not guilty of that crime.

16 Now, count 13 of the indictment, remember I told you  
17 I'm going to take these out of order because they build. Count  
18 13 of the indictment charges a conspiracy to violate the  
19 narcotics laws. A conspiracy is a kind of criminal  
20 partnership, an agreement of two or more persons to join  
21 together to accomplish some unlawful purpose. It is an  
22 entirely separate and different offense from the substantive  
23 crime that may be the objective of the conspiracy. Indeed, you  
24 may find a defendant guilty of the crime of conspiracy, even if  
25 you find that the substantive crime that was the object of the

CBS3MER2

Jury Charge

1 conspiracy was never actually committed. Of course, if a  
2 defendant participates in a conspiracy and the crime or crimes  
3 that were the object of this conspiracy were committed, the  
4 defendant may be guilty of both the conspiracy and the  
5 substantive crime. The point is simply that the crime or  
6 crimes that were the objective of the conspiracy need not have  
7 been actually committed for a conspiracy to exist.

8 Specifically, count 13 reads as follows:

9 From at least in or about the spring of 2010, up to  
10 and including in or about September 2011, Joshua Meregildo,  
11 Melvin Colon, Earl Pierce, and Nolbert Miranda, and others  
12 known and unknown, intentionally and knowingly did combine,  
13 conspire, confederate, and agree together and with each other  
14 to violate the narcotics laws of the United States by  
15 distributing and possessing with intent to distribute 280 grams  
16 and more of mixtures and substances containing a detectable  
17 amount of cocaine base in a form commonly known as crack  
18 cocaine and a quantity of marijuana.

19 To meet its burden of proving a defendant guilty of  
20 count 13, the government must prove the following two elements  
21 beyond a reasonable doubt:

22 First, the existence of the conspiracy to violate the  
23 narcotics laws at or about the time charged in count 13 of the  
24 indictment; and

25 Second, that the defendant you are considering

CBS3MER2

Jury Charge

1 knowingly and wilfully associated himself with and joined in  
2 the conspiracy.

3 First, what is a conspiracy? As I mentioned just a  
4 few moments ago, a conspiracy is a combination, an agreement,  
5 or an understanding of two or more persons to accomplish by  
6 concerted action a criminal or unlawful purpose. In this  
7 instance, the conspiracy charged in count 13 is alleged to have  
8 two unlawful purposes or objectives. First, the distribution  
9 of crack cocaine or the possession of crack cocaine with the  
10 intent to distribute it. And second, the distribution of  
11 marijuana, or the possession of marijuana with intent to  
12 distribute it.

13 The essence of the crime of conspiracy is the unlawful  
14 agreement between two or more people to violate the law. The  
15 success of the conspiracy or the actual commission of the  
16 criminal act that is the objective of the conspiracy is not an  
17 element of that crime. The conspiracy alleged here is the  
18 agreement to commit the crime, and it is an entirely distinct  
19 and separate offense from the actual commission of the crime.

20 Now, to show a conspiracy, the government is not  
21 required to show that two or more persons sat around a table  
22 and entered into a solemn pact orally or in writing stating  
23 that they've formed a conspiracy to violate the law and  
24 spelling out all the details. Common sense tells you when  
25 people in fact agree to enter into a criminal conspiracy, much

CBS3MER2

Jury Charge

1 is left to the unexpressed understanding. It is rare that a  
2 conspiracy can be proven by direct evidence of an explicit  
3 agreement.

4 To show that a conspiracy existed, the evidence must  
5 show that two or more persons in some way or manner, either  
6 explicitly or implicitly, came to an understanding to violate  
7 the law and to accomplish an unlawful plan.

8 In determining whether there has been an unlawful  
9 agreement as alleged in the indictment, you may consider the  
10 actions of all the alleged co-conspirators that were taken to  
11 carry out the apparent criminal purpose. The old adage  
12 "actions speak louder than words" applies here. Often, the  
13 only evidence that is available with respect to the existence  
14 of the conspiracy is that of disconnected acts on the part of  
15 the alleged individual co-conspirators. When taken all  
16 together and considered as a whole, however, that conduct may  
17 warrant an inference that a conspiracy existed just as  
18 conclusively as more direct proof, such as evidence of an  
19 expressed agreement.

20 So you must first determine whether or not the proof  
21 establishes beyond a reasonable doubt the existence of the  
22 conspiracy charged in the indictment. In considering this  
23 first element, you should consider all the evidence that has  
24 been admitted with respect to the conduct and statements of  
25 each alleged co-conspirator and any inferences you may

CBS3MER2

Jury Charge

1 reasonably draw from that conduct and those statements. It is  
2 sufficient to establish the existence of the conspiracy, as  
3 I've already said, if, from the proof of all the relevant facts  
4 and circumstances, you find beyond a reasonable doubt that the  
5 minds of at least two alleged co-conspirators met in an  
6 understanding way to accomplish the objectives of the  
7 conspiracy charged in the indictment.

8 The indictment charges two objectives of the  
9 conspiracy: The distribution and possession with intent to  
10 distribute cocaine base in a form commonly known as crack  
11 cocaine; and, two, the distribution of and possession with the  
12 intent to distribute marijuana. I'll explain these terms for  
13 you later in this charge.

14 The objective of a conspiracy is the illegal goal that  
15 co-conspirators agree or hope to achieve. If you can  
16 unanimously find that a conspiracy existed and that the  
17 conspiracy had the charged objective described in the  
18 indictment, the illegal purpose element will be satisfied.

19 If you conclude that the government has proven beyond  
20 a reasonable doubt that the conspiracy charged in the  
21 indictment existed, you must next determine the second  
22 question, and that is whether the defendant you are considering  
23 participated in that conspiracy with knowledge of its unlawful  
24 purposes or in furtherance of its unlawful objectives.

25 In count 13, Joshua Meregildo, Melvin Colon, Earl

CBS3MER2

Jury Charge

1       Pierce, and Nolbert Miranda are each charged with conspiring  
2       with themselves and others from approximately the spring of  
3       2010 through approximately September 2011 to violate the  
4       narcotics laws. Count 13 of the indictment charges that the  
5       conspiracy had two objectives: The distribution and possession  
6       with intent to distribute cocaine base in a form commonly known  
7       as crack cocaine; and the distribution of and possession with  
8       intent to distribute marijuana.

9           Although there are two objectives charged in count 13,  
10       the government need not prove all of the objectives beyond a  
11       reasonable doubt. If you find beyond a reasonable doubt that  
12       the conspiracy existed and that it had one of the charged  
13       objectives, the illegal purpose element will be satisfied. You  
14       must be unanimous as to the objective you do find. In the  
15       event you find that both of the objectives were proven, you  
16       must be unanimous in that conclusion as well. In sum, you must  
17       all be in agreement with respect to at least one of the alleged  
18       objectives of the conspiracy.

19           I instruct you that cocaine base is cocaine in its  
20       base form. Crack cocaine is a street name for a form of  
21       cocaine base. The government is not required to prove that the  
22       alleged substance was crack cocaine, but rather that the  
23       substance contained cocaine base. Throughout the remainder of  
24       this charge, I will refer to cocaine base as crack cocaine. I  
25       further instruct you that crack cocaine and marijuana are

CBS3MER2

## Jury Charge

1 controlled substances under the narcotics laws of the United  
2 States, and throughout the remainder of this charge I will use  
3 the term controlled substances and narcotics interchangeably.

4 Additionally, the purity of the narcotics involved is  
5 not an element of the crime. So you need not be concerned with  
6 that.

7 I've been using the terms possession with intent to  
8 distribute and distribute. What do those terms mean? The  
9 legal concept of possession differs from the everyday usage of  
10 that term, so let me explain it in some detail. Actual  
11 possession is what most of us think of as possession. That is,  
12 having physical custody or control of an object. Therefore, if  
13 you find that a defendant had a firearm or drugs on his person,  
14 you may find that he had possession of it. However, a person  
15 need not have actual physical possession -- that is, physical  
16 custody of an object -- to legally possess it. If a person has  
17 the ability to exercise substantial control over an object,  
18 even if he does not have the object in his physical custody at  
19 a given moment, and that person has the intent to exercise such  
20 control, then he is in legal possession of that article. This  
21 is called constructive possession.

22 Control over an object may be demonstrated by the  
23 existence of a relationship between the person who has the  
24 power or ability to control the item and another person who has  
25 actual physical custody of the item. The person having control

CBS3MER2

Jury Charge

1 possesses the firearm or drugs because he has a relationship  
2 with the person who has actual physical custody of the firearm  
3 or drugs. That control permits him to direct the movement,  
4 transfer or disposition of a firearm or drugs. In addition, an  
5 individual may have possession of an item that is not found on  
6 his person because that individual has control over the  
7 location where the item is maintained.

8 (Continued on next page)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Cbs1mer3

Charge

1                   THE COURT: In this manner, for example, a  
2 businessperson may legally possess things that are scattered  
3 throughout a number of stores or offices around the country.

4                   More than one person can have control over the same  
5 firearm or drugs. The law recognizes that possession may be  
6 sole or joint. If one person alone has actual or constructive  
7 possession of an item, possession is sole. If more than one  
8 person has possession of it, as I've defined possession for  
9 you, then possession is joint.

10                  Proof of ownership is not required to establish  
11 possession. If an individual has the ability to exercise  
12 substantial control over an object that he does not have in his  
13 physical possession and the intent to exercise such control,  
14 then he is in possession of that article.

15                  Now to "distribute" means the actual, constructive, or  
16 attempted transfer of a controlled substance. Distribution  
17 includes delivering, passing, or handing over something to  
18 another person or causing something to be delivered, passed on,  
19 or handed over to another person. Distribution does not  
20 require a sale but includes sales.

21                  With respect to Count Thirteen, the government need  
22 prove only that the conspirators agreed to distribute crack  
23 cocaine or marijuana or that they agreed to possess crack  
24 cocaine or marijuana with the intent to distribute it. The  
25 government need not prove both.

Cbs1mer3

Charge

1                   Possession "with intent to distribute" simply means  
2 the possession of a controlled substance with the intention or  
3 purpose to distribute it to another person or persons.

4                   If you conclude that the government has proven beyond  
5 a reasonable doubt that the narcotics conspiracy charged in  
6 Count Thirteen existed, then you must next determine the second  
7 question: whether the defendant you are considering  
8 participated in the conspiracy unlawfully, intentionally, and  
9 knowingly -- in other words, with knowledge of its unlawful  
10 purpose and with the intent to further its unlawful objective.

11                  The government must prove beyond a reasonable doubt  
12 that the defendant you are considering intentionally and  
13 knowingly entered into the conspiracy with a criminal intent --  
14 that is, with a purpose to violate the law -- and that he  
15 agreed to take part in the conspiracy to promote and cooperate  
16 in its unlawful objectives.

17                  The terms "unlawfully," "intentionally," and  
18 "knowingly" are intended to ensure that if you find that the  
19 defendant did join the conspiracy, you may not find the  
20 defendant guilty unless you also conclude beyond a reasonable  
21 doubt that, in doing so, the defendant knew what he was  
22 doing -- in other words, he took the actions in question  
23 deliberately and voluntarily.

24                  "Unlawfully" simply means contrary to law. The  
25 defendant need not have known that he was breaking any

Cbs1mer3

Charge

1 particular law or any particular rule, but he must have been  
2 aware of the generally unlawful nature of his acts.

3 An act is done "knowingly" and "intentionally" if it  
4 is done deliberately and purposefully; that is, a defendant's  
5 acts must have been the product of his conscious objective,  
6 rather than the product of force, mistake, accident, mere  
7 negligence, or some other innocent reason.

8 Now knowledge is a matter of inference from the proven  
9 facts. Science has not yet devised a manner of looking into a  
10 person's mind and knowing what that person is thinking.  
11 However, you do have before you the evidence of certain acts  
12 and conversations alleged to have taken place involving the  
13 defendant or in his presence. You may consider this evidence,  
14 if you choose to credit it, in determining whether the  
15 government has proven beyond a reasonable doubt the defendant's  
16 knowledge of the unlawful purposes of the conspiracy.

17 It is not necessary for the government to show that  
18 the defendant was fully informed as to all the details of the  
19 conspiracy for you to infer knowledge on his part. To have  
20 guilty knowledge, a defendant need not have known the full  
21 extent of the conspiracy or all of the activities of all of its  
22 participants. It's not even necessary for the defendant to  
23 know every other member of the conspiracy.

24 In addition, the duration and extent of a defendant's  
25 participation has no bearing on a defendant's guilt. He need

Cbs1mer3

Charge

1 not have joined the conspiracy at the outset. A defendant may  
2 have joined it for any purpose at any time in its progress and  
3 that defendant will be held responsible for all that was done  
4 before he joined and all that was done during the conspiracy's  
5 existence while he was a member. Each member of the conspiracy  
6 may perform separate and distinct acts and may perform them at  
7 different times. Some conspirators play major roles, while  
8 others play minor roles in the scheme. An equal role is not  
9 what the law requires.

10 However, I want to caution you that a person's mere  
11 association with a member of the conspiracy does not make that  
12 person a member of the conspiracy, even when that association  
13 is coupled with knowledge that a conspiracy is taking place.  
14 Mere presence at the scene of a crime, even coupled with  
15 knowledge that a crime is taking place, is not sufficient to  
16 support a conviction. In other words, knowledge without  
17 agreement and participation is not sufficient. What is  
18 necessary is that a defendant participated in the conspiracy  
19 with knowledge of its unlawful purposes and with the intent to  
20 aid in the accomplishment of its unlawful objectives.

21 In sum, the defendant, with an understanding of the  
22 unlawful nature of the conspiracy, must have intentionally  
23 engaged, advised, or assisted in the conspiracy for the purpose  
24 of furthering an illegal undertaking. The defendant thereby  
25 becomes a knowing and willing participant in the unlawful

Cbs1mer3

Charge

1 agreement -- that is to say, he becomes a conspirator.

2 Now Count Thirteen of the indictment charges that each  
3 defendant knowingly and deliberately conspired to violate the  
4 narcotics laws of the United States.

5 To meet its burden against a particular defendant, the  
6 government must prove beyond a reasonable doubt that the  
7 narcotics conspiracy charged in Count Thirteen of the  
8 indictment existed and that the defendant you're considering  
9 was a member of it. If you find that the conspiracy charged  
10 did not exist, then you must return a not guilty verdict --  
11 even though you find that some other conspiracy existed. If  
12 you find that the charged conspiracy existed but that the  
13 defendant you are considering was not a member of that charged  
14 conspiracy, then you must find that defendant not guilty --  
15 even though you find that he was a member of some other  
16 conspiracy.

17 Multiple conspiracies exist when the evidence shows  
18 separate unlawful agreements operating independently of each  
19 other to achieve distinct purposes. You may, however, find  
20 that the charged conspiracy existed despite the fact that there  
21 were changes in personnel by the termination, withdrawal, or  
22 addition of new members or activities, or both. And a single  
23 conspiracy may exist without each member of the conspiracy  
24 conspiring directly with every other member of the conspiracy.

25 Now if, and only if, you conclude that the government

Cbs1mer3

Charge

1 has met its burden of establishing a defendant's guilt beyond a  
2 reasonable doubt of the narcotics conspiracy charged in Count  
3 Thirteen, then you must determine what quantity of drugs the  
4 conspiracy involved. You'll be provided with a verdict form  
5 that will include spaces for you to indicate your determination  
6 with respect to drug quantity and drug type.

7 You do not need to determine the precise quantity of  
8 drugs involved in the conspiracy. Rather, you only need to  
9 decide whether the conspiracy involved any quantity of  
10 marijuana and/or more than certain specified amounts of crack  
11 cocaine, and whether the defendant knew or reasonably could  
12 have foreseen that the conspiracy involved those amounts.

13 The amounts of crack cocaine you'll be asked to  
14 consider are as follows: 280 grams or more, more than 28 grams  
15 but less than 280 grams, and less than 28 grams. You will not  
16 be asked to make any determination on drug quantity concerning  
17 marijuana.

18 Your finding as to drug quantity must be beyond a  
19 reasonable doubt. In addition, it must be unanimous in that  
20 all of you must agree that the conspiracy involved at least the  
21 quantity you indicate. Thus, for example, if all of you agreed  
22 that the conspiracy involved 280 grams or more of crack  
23 cocaine, you should indicate 280 grams or more of crack  
24 cocaine. If, however, some jurors conclude that the conspiracy  
25 involved 280 grams or more of crack cocaine and the rest of the

Cbs1mer3

Charge

1       jurors conclude that it involved 28 grams or more but less than  
2       280 grams or more of crack cocaine, you should indicate  
3       28 grams or more but less than 280 grams because all of you  
4       would be in agreement that the conspiracy involved at least  
5       that amount of crack cocaine.

6               Now Counts Fourteen through Sixteen allege that the  
7       charged defendant committed a killing while engaged in a  
8       narcotics conspiracy that involved the distribution and  
9       possession with intent to distribute 280 grams or more of crack  
10       cocaine. The narcotics conspiracy is charged in Count  
11       Thirteen, and I've already defined for you the elements of that  
12       charge. If, and only if, you find the defendant you are  
13       considering guilty of Count Thirteen and also find that the  
14       conspiracy involved 280 grams or more of crack cocaine should  
15       you then consider the corresponding charge for the defendant in  
16       Counts Fourteen through Sixteen.

17               More specifically, Count Fourteen alleges that the  
18       defendant Earl Pierce, while engaged in the narcotics  
19       conspiracy charged in Count Thirteen that involved the  
20       distribution and possession with intent to distribute 280 grams  
21       or more of crack cocaine, killed or caused or aided and abetted  
22       the killing of Jason Correa on July 25, 2010.

23               Count Fifteen alleges that the defendant Joshua  
24       Meregildo, while engaged in the narcotics conspiracy charged in  
25       Count Thirteen which involved the distribution and possession

Cbs1mer3

Charge

1 with intent to distribute 280 grams or more of crack cocaine,  
2 killed or caused or aided and abetted the killing of Carrel  
3 Ogarro on July 31, 2010.

4 Count Sixteen alleges that the defendant Melvin Colon,  
5 while engaged in the narcotics conspiracy charged in Count  
6 Thirteen that involved the distribution and possession with  
7 intent to distribute 280 grams or more of crack cocaine, killed  
8 or caused or aided and abetted the killing of Delquan Alston on  
9 August 27, 2010.

10 The relevant statute provides:

11 Any person engaging in a [narcotics offense] who  
12 intentionally kills or counsels, induces, procures, or causes  
13 the intentional killing of an individual and such killing  
14 results, shall be guilty of a crime.

15 To meet its burden of proof on Counts Fourteen,  
16 Fifteen, or Sixteen, the government must prove each of the  
17 following four elements beyond a reasonable doubt:

18 First: That the defendant you are considering is  
19 guilty of the narcotics conspiracy alleged in Count Thirteen;

20 Second: That the narcotics conspiracy involved  
21 280 grams or more of crack cocaine;

22 Third: That while engaged in the narcotics  
23 conspiracy, he either intentionally killed the person specified  
24 in the indictment or counseled, induced, procured, or caused  
25 the intentional killing of that person; and

Cbs1mer3

Charge

1                  Fourth: That the killing actually resulted from that  
2 defendant's actions or that he aided and abetted the killing.

3                  As I just mentioned, to find the defendant you are  
4 considering guilty of Count Fourteen, Fifteen, or Sixteen, you  
5 must determine first whether the defendant you are considering  
6 was engaged in a narcotics conspiracy, and second, whether that  
7 conspiracy involved 280 grams or more of crack cocaine. I've  
8 already explained to you the elements of a narcotics  
9 conspiracy, and you should apply those instructions here. I  
10 instruct you that if you find that the defendant you are  
11 considering is guilty of Count Thirteen and that the government  
12 proved a drug quantity of 280 grams or more of crack cocaine,  
13 then these two elements are necessarily proven.

14                  The third element the government must prove beyond a  
15 reasonable doubt is that the defendant you are considering,  
16 while engaged in the narcotics conspiracy charged in Count  
17 Thirteen, intentionally killed the person specified in the  
18 indictment or counseled, induced, procured, or caused the  
19 intentional killing of that person.

20                  The indictment alleges, in Count Fourteen, that Earl  
21 Pierce intentionally killed or counseled, induced, procured, or  
22 caused the intentional killing of Jason Correa. The indictment  
23 alleges in Count Fifteen that Joshua Meregildo intentionally  
24 killed or counseled, induced, procured, or caused the  
25 intentional killing of Carrel Ogarro. The indictment alleges

Cbs1mer3

Charge

1 in Count Sixteen that Melvin Colon intentionally killed or  
2 counseled, induced, procured, or caused the intentional killing  
3 of Delquan Alston. I will define some of these terms for you.

4 To show that a killing occurred while a defendant was  
5 engaged in a narcotics conspiracy, the government must prove  
6 more than simply a temporal connection between the killing and  
7 the drug conspiracy. The government must show a substantive  
8 connection between the narcotics conspiracy and the killing at  
9 issue -- in other words, that they were in some way related or  
10 connected. If you find that the murder is wholly unconnected  
11 or simply coincidental to the narcotics conspiracy, then this  
12 element will not be satisfied.

13 The government must prove that at least one of the  
14 defendant's purposes or motives in the killing at issue was the  
15 narcotics conspiracy charged in Count Thirteen. It is not  
16 necessary for the government to prove that this motive was the  
17 sole purpose or even the primary purpose of the defendant to  
18 commit the charged crime. You need only find that was one of  
19 his purposes or motives.

20 A person "intentionally kills" another person when he  
21 does so deliberately and purposefully. That is, the  
22 defendant's actions must have been his conscious objective  
23 rather than the product of a mistake, accident, negligence, or  
24 some other innocent reason.

25 To meet its burden of proof, the government need not

Cbs1mer3

Charge

1 prove that a defendant directly caused the death of the  
2 individual named in the indictment. The statute takes into  
3 consideration that while certain people might have a direct  
4 involvement in an intentional killing, others can be held  
5 responsible even if they played a less direct role. Thus, the  
6 third element can be satisfied if you find beyond a reasonable  
7 doubt that the defendant you are considering counseled,  
8 induced, procured, or caused the killing of the individual  
9 named in the indictment.

10 You should give these words their ordinary meaning.  
11 To "counsel" means to give advice or recommend. To "induce"  
12 means to lead or move by persuasion or influence to some action  
13 or state of mind. To "procure" means to bring about by  
14 unscrupulous or indirect means. To "cause" means to bring  
15 something about, to effect something.

16 Finally, the fourth element the government must prove  
17 beyond a reasonable doubt is that the killing must have  
18 resulted from the acts of the defendant you are considering or  
19 that he aided and abetted the killing.

20 The defendant you are considering may also be  
21 convicted of Count Fourteen, Fifteen, or Sixteen if you find  
22 that he aided and abetted the killing at issue while engaged in  
23 a narcotics conspiracy involving 280 grams or more of crack  
24 cocaine. I've already explained the concept of aiding and  
25 abetting thoroughly and also with specific reference to the

Cbs1mer3

Charge

1 narcotics conspiracy. The concept of aiding and abetting means  
2 the same thing with respect to the killings charged in Counts  
3 Fourteen, Fifteen, and Sixteen. You should apply my previous  
4 instructions on that subject.

5 Now there is another theory of liability you may  
6 consider in determining whether the government proved beyond a  
7 reasonable doubt that Earl Pierce committed the murder charged  
8 in Count Fourteen, which is called co-conspirator liability.  
9 You may not consider this theory of liability against any other  
10 defendant for any other count unless specifically instructed.

11 To meet its burden of proof of Count Fourteen for  
12 co-conspirator liability, the government must prove each of the  
13 following five elements beyond a reasonable doubt:

14 First: That someone committed the murder of Jason  
15 Correa as charged in Count Fourteen;

16 Second: That the person you find actually committed  
17 the killing was a member of the narcotics conspiracy charged in  
18 Count Thirteen;

19 Third: That this co-conspirator committed the murder  
20 of Jason Correa in furtherance of the conspiracy charged in  
21 Count Thirteen;

22 Fourth, that Earl Pierce was a member of the narcotics  
23 conspiracy charged in Count Thirteen at the time of the  
24 killing; and

25 Fifth: That Earl Pierce could reasonably have

Cbs1mer3

Charge

1 foreseen that one or more of these co-conspirators might commit  
2 the killing.

3 If the government proves all five of these elements  
4 beyond a reasonable doubt, then you may find Earl Pierce guilty  
5 of the murder charged in Count Fourteen, even if he did not  
6 personally participate in the acts constituting the crime or  
7 did not have actual knowledge of it.

8 Count Twenty-two charges that Joshua Meregildo, Melvin  
9 Colon, Earl Pierce, and Nolbert Miranda knowingly possessed,  
10 carried, or used firearms during and in relation to, or in  
11 furtherance of, the narcotics conspiracy charged in Count  
12 Thirteen, or aided and abetted the same.

13 The relevant federal statute provides:

14 It shall be a crime for any person, "during and in  
15 relation to any crime of violence or drug trafficking crime...  
16 to use or carry a firearm," or, "in furtherance of any such  
17 crime, to possess a firearm."

18 You may not consider Count Twenty-two unless you first  
19 determine that the defendant you are considering is guilty of  
20 the narcotics conspiracy charged in Count Thirteen. Unlike  
21 Counts Fourteen, Fifteen, and Sixteen, however, there is no  
22 additional requirement that you also find that the narcotics  
23 conspiracy involved 280 grams or more of crack cocaine.

24 Now to meet its burden of proof on Count Twenty-two,  
25 the government must prove each of the following three elements

Cbs1mer3

Charge

1 beyond a reasonable doubt:

2                   First: That on or about the dates alleged in the  
3 indictment, the defendant you are considering used, carried, or  
4 possessed a firearm, or aided and abetted its use, carrying, or  
5 possession;

6                   Second: That the defendant you are considering used  
7 or carried the firearm during and in relation to the drug  
8 trafficking crime charged in Count Thirteen of the indictment  
9 or that the defendant possessed a firearm in furtherance of  
10 such a crime; and

11                  Third: The defendant acted knowingly, unlawfully, and  
12 wilfully.

13                  The first element the government must prove beyond a  
14 reasonable doubt on Count Twenty-two is that on or about the  
15 dates set forth in the indictment, the defendant used, carried,  
16 or possessed a firearm, or aided and abetted its use, carrying,  
17 or possession.

18                  A firearm, under the statute, means any weapon that  
19 will or is designed to or may readily be converted to expel a  
20 projectile by the action of an explosive. In considering  
21 whether a defendant used or carried or possessed a firearm, it  
22 does not matter whether the firearm was loaded or operable at  
23 the time of the crime. Operability is not relevant to your  
24 determination of whether a weapon qualifies as a firearm.

25                  To prove that the defendant you are considering used

Cbs1mer3

Charge

1 the firearm, the government must prove beyond a reasonable  
2 doubt that that defendant actively employed the firearm during  
3 and in relation to the commission of a drug trafficking crime  
4 for Count Twenty-two, or crime of violence for Counts Twenty  
5 and Twenty-one, or that the defendant aided and abetted some  
6 one else's use of the firearm. This does not mean that the  
7 defendant must actually fire or attempt to fire the weapon.  
8 Brandishing, displaying, or even referring to the weapon so  
9 that others present knew that the defendant had the firearm  
10 available if needed, all constitute use of the firearm.  
11 However, the mere possession of a firearm at or near the site  
12 of the crime without active employment, as I just described it,  
13 is not sufficient to constitute use of the firearm.

14 To prove that the defendant you are considering  
15 carried the firearm, the government must prove beyond a  
16 reasonable doubt that that defendant or someone he aided and  
17 abetted had the weapon within his immediate control so that it  
18 was immediately available for use while committing a drug  
19 trafficking crime for Count Twenty-two or a crime of violence  
20 for Counts Twenty and Twenty-one. The defendant need not have  
21 held the firearm physically, that is, have had actual  
22 possession of it on his person. If you find that the  
23 defendant, or someone that he aided and abetted, had dominion  
24 and control over the place where the firearm was located and  
25 had the power and intention to exercise control over the

Cbs1mer3

Charge

1 firearm and that the firearm was immediately available to the  
2 defendant in such a way that it furthered the commission of the  
3 drug trafficking crime for Count Twenty-two or crime of  
4 violence for Counts Twenty and Twenty-one, you may find that  
5 the government has proven that the defendant carried the  
6 weapon.

7 I previously instructed you on the meaning of  
8 "possession," and you should follow those instructions here.  
9 To reiterate, neither actual physical custody nor ownership is  
10 required to show that a person possesses an object.

11 Possession of a firearm in furtherance of a drug  
12 trafficking crime for Count Twenty-two or a crime of violence  
13 for Counts Twenty and Twenty-one requires that the defendant  
14 possess a firearm and that the possession advanced or moved the  
15 crime forward. The mere presence of a firearm is not enough.  
16 Possession in furtherance requires that the possession be  
17 incident to and an essential part of the crime. The firearm  
18 must have played some part in furthering the crime for this  
19 element to be satisfied.

20 The second element that the government must prove  
21 beyond a reasonable doubt is that the defendant used or carried  
22 a firearm during and in relation to the drug trafficking crime  
23 charged in Count Thirteen of the indictment or possessed a  
24 firearm in furtherance of such crime. You're instructed that  
25 the narcotics conspiracy alleged in Count Thirteen is a drug

Cbs1mer3

Charge

1 trafficking crime.

2 The third element the government must prove beyond a  
3 reasonable doubt is that the defendant you are considering knew  
4 that he was carrying or using or possessing a firearm and that  
5 he acted wilfully in doing so.

6 To satisfy this element, you must find that the  
7 defendant had knowledge that what he was carrying or using or  
8 possessing -- or the person he aided and abetted carried or  
9 used or possessed -- was a firearm as that term is generally  
10 understood. An act is done knowingly if it is done  
11 purposefully and voluntarily as opposed to mistakenly or  
12 accidentally. You will recall that I instructed you earlier  
13 that to find someone acted knowingly, you must make a finding  
14 as to that person's state of mind. For the government to  
15 satisfy this element, it must prove that the defendant knew  
16 what he was doing -- for example, that he knew he was carrying  
17 or using a firearm during and in relation to the commission of  
18 a drug trafficking crime or that he was possessing a firearm in  
19 furtherance of such crime.

20 However, it's not necessary for the government to  
21 prove that that defendant knew that he was violating any  
22 particular law.

23 Each defendant is also charged with aiding and  
24 abetting the use, carrying, or possession of a firearm in Count  
25 Twenty-two. I've already explained the concept of aiding and

Cbs1mer3

Charge

1 abetting thoroughly. The concept of aiding and abetting the  
2 use, carrying, or possession of a firearm means the same thing,  
3 with one additional instruction that I'll give you now.

4 To convict the defendant you are considering of aiding  
5 and abetting another's use, carrying of, or possession of a  
6 firearm, it is not enough to find that the defendant performed  
7 an act to facilitate or encourage the commission of the  
8 narcotics conspiracy charged in Count Thirteen with only the  
9 knowledge that a firearm would be used or carried in the  
10 commission of that crime. Instead, you must find that that  
11 defendant performed some act that facilitated the actual using  
12 or carrying of a firearm during the charged narcotics  
13 conspiracy or the possession of a firearm in relation to the  
14 charged narcotics conspiracy.

15 For example, if you find that the defendant you are  
16 considering directed another person to use, carry, or possess a  
17 gun in the commission of the charged narcotics conspiracy or  
18 made such gun available to the other person, then that  
19 defendant aided and abetted the other person's use of a  
20 firearm. Or, if you find that the defendant you are  
21 considering was present at the scene during the commission of  
22 the charged narcotics conspiracy, you may consider whether that  
23 defendant's conduct at the scene facilitated or promoted the  
24 carrying of a gun and thereby aided and abetted the other  
25 person's carrying of the firearm. These examples are offered

Cbs1mer3

1 only by way of illustration and are not meant to be exhaustive.

2 Now, members of the jury, we've been going for quite  
3 some time and a trial is not an endurance contest, so we're  
4 going to take a very short recess and then I'm going to  
5 continue with my charge on the law.

6 Keep an open mind, don't discuss the case. Leave your  
7 binders on your chair.

8 Please recess the jury.

9 THE CLERK: Come to order. Jury exiting.

10 (Jury excused)

11 THE COURT: Any issues?

12 MR. DINNERSTEIN: Your Honor, first I just would like  
13 to compliment you on how well you're reading.

14 Secondly, I did notice as I was going through this --

15 THE COURT: Commend my second grade teacher.

16 MR. DINNERSTEIN: I did notice, your Honor, as I was  
17 going through this, that there's a difference in terms of the  
18 caption and in terms of the body on page 108 and 109. I don't  
19 think it's really -- I'm not sure if you need to have it fixed.  
20 But for instance, on page 108, the caption says Counts Ten and  
21 Twelve and it really only makes reference to Count Eight --  
22 Count Ten in the body. And also on page 109, it also says  
23 Counts Ten and Twelve but it only makes reference to Count  
24 Twelve in the body. Count Twelve deals with Mr. Colon and  
25 Count Ten deals with Mr. Meregildo. So the caption is actually

Cbs1mer3

1 inaccurate but the rest of it is actually fine.

2 THE COURT: I'm going to instruct them that the  
3 captions are not the charge, but it's clear to me that "Counts  
4 Ten and Twelve" is talking about this section and then there's  
5 a subcaption that discusses Mr. Meregildo and Count Ten, and  
6 then the next page, the subsection discusses Count Twelve  
7 against Mr. Colon.

8 MR. DINNERSTEIN: Right. I don't really have -- I  
9 just wanted to bring it to the court's attention and also  
10 because I did have, as part of my PowerPoint presentation, a  
11 discussion of that particular Count Twelve, which of course  
12 didn't make reference to Count Ten. But I don't think it needs  
13 to be changed and I understand that the few sections before  
14 that are dealing with both Counts Ten and Eleven -- both Counts  
15 Ten and Twelve.

16 MR. BECKER: Your Honor, I did have something, at  
17 pages 6 and 3 -- pages 3 and 6, where you're telling the jury  
18 in both instances that they're not to consider any answer that  
19 you directed them to disregard, and then on page 6, "disregard  
20 any testimony I have stricken." That's of course accurate and  
21 I have no problem with that. But what I would like to note is  
22 that in reviewing the trial record over the weekend, I saw that  
23 there were lots of instances where a question was asked, an  
24 objection was sustained, but the witness nonetheless answered,  
25 and that also is not evidence in the case, notwithstanding that

Cbs1mer3

1 the court didn't specifically instruct the jury to disregard  
2 it. And am I being clear, Judge?

3 THE COURT: Yes, you are, and I'll give some further  
4 instruction.

5 MR. BECKER: Okay. And then one last thing, and just  
6 obviously I'm sincere in what I'm about to say, but I need the  
7 record to be clear about this. When the court was just reading  
8 about using a gun in furtherance of a drug trafficking offense  
9 or in furtherance of a crime of violence -- and of course  
10 Mr. Miranda is only charged with possession of the gun in  
11 furtherance of drug trafficking, not of a crime of violence --  
12 yesterday, during Ms. Heller's rebuttal summation, at page  
13 6185, line 23, referring to the supposed 9-millimeter gun that  
14 Mr. Miranda allegedly had, she said: "What we do know is he  
15 asked Mr. Parsons to carry it for him and the two men later  
16 dropped it off on the second floor of 681 Courtlandt, which is  
17 where Earl Pierce lives. That's how Pierce got the gun, which  
18 was used to shoot Tarean Joseph on September 13, 2010." The  
19 implication being, although Ms. Heller didn't say it, that  
20 Mr. Miranda asked him to carry the gun, which is the  
21 constructive possession element, which she then talks about,  
22 and that that gun was then used in a shooting, suggesting that  
23 he -- the gun was possessed or used in connection with a crime  
24 of violence, namely, the September 13<sup>th</sup> shooting. He's not  
25 charged with that. And that should not have been argued to the

Cbs1mer3

1       jury. And so I would request at a minimum a curative  
2       instruction that they should disregard those two sentences that  
3       I just read of Ms. Heller because it improperly constitutes a  
4       variance of the indictment. He's not charged with possession  
5       or using a gun personally or constructively in furtherance of  
6       any crime of violence.

7            MS. HELLER: Your Honor, that argument was entirely  
8       supported by the proof and the evidence in this case. We  
9       certainly didn't argue, as Mr. Becker himself has acknowledged,  
10       that Mr. Miranda was charged with that crime. He wasn't  
11       charged with that crime. But the arguments that I made, which,  
12       of course, were arguments, were completely supported by all the  
13       record evidence. We absolutely oppose any instruction on this  
14       point.

15            MR. BECKER: Your Honor, obviously Ms. Heller didn't  
16       argue that he was charged with that crime. I mean, that would  
17       have been ludicrous. It's not a question of her saying to the  
18       jury or not saying to the jury, "He's charged, ladies and  
19       gentlemen, with possessing the gun in the crime of violence,"  
20       because she wouldn't be able to point to a count. But she  
21       nonetheless argued it by saying the words that I just read.

22            MS. HELLER: Your Honor, it goes to the racketeering  
23       conspiracy, which is why I argued it, and that's when I argued  
24       it. It goes to his acquiescence in other members of the  
25       organization possessing guns and committing acts of violence.

Cbs1mer3

1 MR. BECKER: No, your Honor, because --

2 MS. HELLER: That's when I argued it and why I was  
3 arguing.

4 THE COURT: Don't interrupt.

5 MR. BECKER: I'm sorry. I'm sorry. Your Honor, that  
6 would only be appropriate if there was evidence in the case  
7 that Mr. Miranda had any knowledge or intent that that gun  
8 would ever be used in any crime in furtherance of the  
9 enterprise, and there's no -- and in a crime of violence. And  
10 there's no suggestion by the government and there's no evidence  
11 supporting that.

12 MS. HELLER: There is evidence in the record. In  
13 fact, Mr. Folks testified that Mr. Miranda told him he lent the  
14 gun to someone who acted like he really needed it. There was  
15 evidence in the record, absolutely, your Honor.

16 MR. BECKER: I think that's not an accurate  
17 recitation, what Ms. Heller said.

18 THE COURT: All right.

19 MR. BECKER: But there's also evidence he said, "Don't  
20 do anything with the gun," so -- the court should be aware of  
21 that as well.

22 THE COURT: All right. Mr. Becker, I'm going to deny  
23 that application.

24 Mr. Miedel?

25 MR. MIEDEL: Very briefly, your Honor. I just want to

Cbs1mer3

1 very briefly for the record renew my objection to the *Pinkerton*  
2 charge that's on page 61 and specifically only because the way  
3 that the evidence came out, and something I neglected to argue  
4 when we had the initial argument is that the jury could find,  
5 for example, based on the statement that Mr. Folks said that  
6 Mr. Pierce supposedly made, which was, "Let them live -- let  
7 him live," the jury could find that he in fact was trying to  
8 prevent a homicide but knew about it in advance, and if they  
9 found that he was a member of the conspiracy under the  
10 *Pinkerton* charge, they could find him guilty of murder  
11 nonetheless, and that would make the *Pinkerton* charge -- which  
12 is already a questionable charge I think and is often  
13 disfavored as a result -- even more prejudicial in this case.

14 THE COURT: Mr. Miedel, your application is denied as  
15 well.

16 MR. BECKER: I probably shouldn't say this, but --

17 THE COURT: Do we have to use up every minute of the  
18 break?

19 MR. BECKER: Your Honor, I'm done. Thank you.

20 THE COURT: All right. Let's escort the defendants  
21 from the courtroom for a few moments.

22 (Defendants excused)

23 THE COURT: All right. Take a few.

24 (Recess)

25 (Continued on next page)

CBS3MER4

Jury Charge

1 (In open court)

2 THE COURT: I'm going to continue reading the charge,  
3 and in about an hour, I'm going to take a 30-minute recess and  
4 then I'll complete the charge and review with the jurors the  
5 jury verdict sheet. Because it's clear that we can't complete  
6 this before lunch, a luncheon recess, it would be too late.  
7 But I'm just going to give them 30 minutes. So let's bring in  
8 the jury.

9 (Jury present)

10 THE COURT: Members of the jury, I'm going to continue  
11 delivering my instructions on the law to you, and there will be  
12 a point at which we will take a short luncheon recess so that  
13 you can have your lunches and then I will complete the charge  
14 and review the jury verdict sheet with you.

15 As you can see, the charge is lengthy. In fact, it's  
16 25,878 words. Okay. It's one and a half times the length of  
17 the Book of Job. So, we will continue the reading at page 70.

18 The remaining charges in the indictment all relate to  
19 violations of the federal racketeering laws. Each of the  
20 defendants is charged with racketeering or racketeering  
21 conspiracy or both. And I will explain the difference between  
22 the two later.

23 One element that is common to all the charges is that  
24 the government must prove beyond a reasonable doubt that an  
25 enterprise existed as alleged in the indictment, and that the

CBS3MER4

Jury Charge

1 enterprise engaged in a pattern of racketeering activity.

2                   Under the racketeering statute, an enterprise includes  
3 any legal entity such as a partnership, corporation, or  
4 association, or a group of individuals who are associated in  
5 fact although not a legal entity. The enterprise does not have  
6 to have a particular name, or for that matter, have any name at  
7 all. Nor must it be registered or licensed as an enterprise.  
8 It does not have to be a commonly recognized legal entity, such  
9 as a corporation, a trade union, a partnership, or the like.

10                  An enterprise may be a group of people informally  
11 associated together for a common purpose of engaging in a  
12 course of conduct. This group may be organized for a  
13 legitimate and lawful purpose or it may be organized for an  
14 unlawful purpose. In addition to having a common purpose, this  
15 group of people must have a core of personnel who function as a  
16 continuing unit. Furthermore, the enterprise must continue to  
17 exist in substantially similar form through the period charged.  
18 This does not mean that the membership must remain exactly  
19 identical, but the enterprise must have a recognizable core  
20 that continues through a substantial period during the time  
21 frame charged in the indictment.

22                  The indictment alleges that the following enterprise  
23 existed: The Enterprise. The Courtlandt Avenue Crew,  
24 including its leadership, its membership, and its associates,  
25 constituted an enterprise as defined by Title 18 of the United

CBS3MER4

Jury Charge

1 States Code, Section 1961(4), that is, a group of individuals  
2 associated in fact although not a legal entity. The enterprise  
3 constituted an ongoing organization whose members function as a  
4 continuing unit for a common purpose of achieving the  
5 objectives of the enterprise. At all times relevant to this  
6 indictment, the enterprise is engaged in and its activities  
7 affected interstate and foreign commerce. Joshua Meregildo,  
8 a/k/a Killia, Melvin Colon, a/k/a Melly, and Earl Pierce, a/k/a  
9 Ski Box, the defendants, participated in the operation and  
10 management of the enterprise and participated in unlawful and  
11 other activities in furtherance of the conduct of the  
12 enterprise's affairs.

13 As I just mentioned, the indictment defines the  
14 charged enterprise as the Courtlandt Avenue Crew, or CAC for  
15 short, which is simply a form of reference adopted for the  
16 purposes of the indictment to describe the group of individuals  
17 who participated in the alleged racketeering enterprise. The  
18 indictment is not evidence, and may not be considered by you as  
19 any evidence of the guilt of the defendants.

20 The indictment alleges that the purposes of the  
21 enterprise are as follows:

22 Purposes of the Enterprise. The purposes of the  
23 enterprise include the following: Enriching the members and  
24 associates of the enterprise through, among other things, the  
25 distribution of narcotics including crack cocaine and

CBS3MER4

Jury Charge

1 marijuana. Preserving and protecting the power of the  
2 enterprise and its members and associates through murder,  
3 attempted murder, other acts of violence and threats of  
4 violence. Promoting and enhancing the enterprise and the  
5 activities of its members and associates.

6 In summary, if the government proves beyond a  
7 reasonable doubt that there was a group of people characterized  
8 by a common purpose or purposes, an ongoing formal or informal  
9 organization or structure, and core personnel who functioned as  
10 a continuing unit during a substantial period within the time  
11 frame charged in the indictment, then an enterprise existed.

12 Another element that is common to all of the remaining  
13 charges is that the government must prove beyond a reasonable  
14 doubt that the enterprise engaged in a pattern of racketeering  
15 activity. A pattern of racketeering activity is a series of  
16 criminal acts and requires proof that at least two acts of  
17 racketeering committed within 10 years of one another were  
18 committed or aided and abetted by participants in the  
19 enterprise. These acts of racketeering may not be isolated or  
20 disconnected, but must be related to each other by a common  
21 scheme, plan or motive. The acts of racketeering must also  
22 amount to, or pose a threat of, continued criminal activity.

23 In determining whether the racketeering acts  
24 constituted a pattern, you may consider whether the acts were  
25 closely related in time, whether the acts shared common victims

CBS3MER4

Jury Charge

1 or common goals, and whether they shared a similarity of  
2 methods. If the same act was repeated more than once, you may  
3 also consider this as evidence that the acts were part of a  
4 pattern.

5 Let me make clear that an enterprise is not the same  
6 thing as the pattern of racketeering activity. The government  
7 must prove both that there was an enterprise, and that the  
8 enterprise's affairs were conducted through a pattern of  
9 racketeering activity. The proof used to establish these  
10 separate elements may be the same or overlapping. For example,  
11 if you find that an ongoing enterprise existed, the existence  
12 of this enterprise may help establish that the separate  
13 racketeering acts were part of a pattern of continuing criminal  
14 activity.

15 Additionally, to establish an enterprise or a pattern  
16 of racketeering activity, the government is not required to  
17 prove that the defendant you are considering actually committed  
18 or aided and abetted the commission of two or more of the  
19 racketeering acts, with the exception of count one that I will  
20 discuss later. Rather, it is sufficient for the government to  
21 show that at least two racketeering acts were committed by any  
22 member of the enterprise.

23 Now, the indictment alleges that six racketeering acts  
24 were or were intended to be committed as part of the pattern of  
25 racketeering activity. These racketeering acts are described

CBS3MER4

Jury Charge

1 in the indictment, but are also contained in the substantive  
2 charges contained in counts three through 12.

3 Racketeering act one incorporates counts three and  
4 four, which charge the conspiracy to murder rival narcotics  
5 distributors and the murder of Jason Correa on July 25, 2010.

6 Racketeering act two incorporates counts five and six,  
7 which charge the conspiracy to murder Carrel Ogarro and the  
8 murder of Carrel Ogarro on July 31, 2010.

9 Racketeering act three incorporates counts seven and  
10 eight, which charge the conspiracy to murder Delquan Alston,  
11 and the murder of Delquan Alston on August 27, 2010.

12 Racketeering act four incorporates counts nine and 10,  
13 which charge the conspiracy to murder rival drug distributors  
14 and an assault and attempted murder of Tarean Joseph on  
15 September 13, 2010.

16 Racketeering act five incorporates counts 11 and 12,  
17 which charge the conspiracy to murder rival gang members, the  
18 attempted murder of a rival gang member, and the assault of  
19 Jing Bao Jiang on September 8, 2011.

20 Racketeering act six incorporates count 13, which  
21 charges the conspiracy to distribute crack cocaine and  
22 marijuana.

23 I will now instruct you generally on counts three  
24 through 12. These counts charge certain defendants with  
25 conspiring to commit murder in aid of racketeering activity or

CBS3MER4

Jury Charge

1 committing murder, assault, or attempted murder in aid of  
2 racketeering activity.

3 Count three alleges that the defendant Earl Pierce  
4 conspired to murder members of a rival narcotics trafficking  
5 organization referred to in the indictment as the Melrose  
6 Organization for the purpose of gaining entrance to or  
7 maintaining or increasing his position in the Courtlandt Avenue  
8 Crew, or in exchange for a thing of value from the Courtlandt  
9 Avenue Crew.

10 Count four alleges that the defendant Earl Pierce, on  
11 or about July 25, 2010, murdered Jason Correa or aided and  
12 abetted Correa's murder for the purpose of gaining entrance to  
13 or maintaining or increasing his position in the Courtlandt  
14 Avenue Crew or in exchange for a thing of value from the  
15 Courtlandt Avenue Crew.

16 Count five alleges that the defendant Joshua Meregildo  
17 conspired to murder Carrel Ogarro for the purpose of gaining  
18 entrance to or maintaining or increasing his position in the  
19 Courtlandt Avenue Crew or in exchange for a thing of value from  
20 the Courtlandt Avenue Crew.

21 Count six alleges that the defendant Joshua Meregildo,  
22 on or about July 31, 2010, murdered Carrel Ogarro or aided and  
23 abetted Ogarro's murder for the purpose of gaining entrance to  
24 or maintaining or increasing his position in the Courtlandt  
25 Avenue Crew or in exchange for a thing of value from the

CBS3MER4

Jury Charge

1 Courtlandt Avenue Crew.

2                   Count seven alleges that the defendant Melvin Colon  
3 conspired to murder Delquan Alston for the purpose of gaining  
4 entrance to or maintaining or increasing his position in the  
5 Courtlandt Avenue Crew or in exchange for a thing of value from  
6 the Courtlandt Avenue Crew.

7                   Count eight alleges that the defendant Melvin Colon,  
8 on or about August 27, 2010, murdered Delquan Alston or aided  
9 and abetted Alston's murder for the purpose of gaining entrance  
10 to or maintaining or increasing his position in the Courtlandt  
11 Avenue Crew or in exchange for a thing of value from the  
12 Courtlandt Avenue Crew.

13                  Count nine alleges that the defendants Earl Pierce and  
14 Joshua Meregildo conspired to murder members of a rival  
15 narcotics trafficking organization referred to in the  
16 indictment as the 321 Organization for the purpose of gaining  
17 entrance to or maintaining or increasing their positions in the  
18 Courtlandt Avenue Crew or in exchange for a thing of value from  
19 Courtlandt Avenue Crew.

20                  Count 10 alleges that the defendants Joshua Meregildo  
21 and Earl Pierce, on or about September 13, 2010, assaulted or  
22 attempted to murder Tarean Joseph or aided and abetted the  
23 assault or attempted murder of Tarean Joseph for the purpose of  
24 gaining entrance to or maintaining or increasing their  
25 positions in the Courtlandt Avenue Crew or in exchange for a

CBS3MER4

Jury Charge

1       thing of value from the Courtlandt Avenue Crew. Tarean Joseph  
2       is also alleged to be a member of the 321 Organization.

3           Count 11 alleges that the defendant Melvin Colon  
4       conspired to murder members of a rival gang referred to as the  
5       Maria Lopez Crew for the purpose of gaining entrance to or  
6       maintaining or increasing his position in the Courtlandt Avenue  
7       Crew or in exchange for a thing of value from the Courtlandt  
8       Avenue Crew.

9           Count 12 alleges that defendant Melvin Colon, on or  
10       about September 8, 2011, assaulted or attempted to murder  
11       members of the Maria Lopez Crew or aided and abetted the  
12       assault or attempted murder of members of the Maria Lopez Crew,  
13       for the purpose of gaining entrance to or maintaining or  
14       increasing his position in the Courtlandt Avenue Crew or in  
15       exchange for a thing of value from the Courtlandt Avenue Crew.  
16       And this resulted in the shooting of Jing Bao Jiang.

17           The statute relevant to the crimes alleged in counts  
18       three through 12 provides as follows:

19           Whoever for the purpose of gaining entrance to or  
20       maintaining or increasing position in an enterprise engaged in  
21       racketeering activity, murders, assaults with a deadly weapon  
22       or dangerous instrument, commits assault resulting in a serious  
23       physical injury upon or threatens to commit a crime of violence  
24       against any individual, in violation of the laws of any state  
25       of the United States, or attempts or conspires to do so, is

CBS3MER4

Jury Charge

1 guilty of a crime.

2 Now, to sustain its burden of proof on counts four,  
3 six, or eight, the government must prove each of the following  
4 three elements beyond a reasonable doubt:

5 First, that there existed as charged in the indictment  
6 an enterprise engaged in racketeering activity as I've  
7 previously defined that term for you;

8 Second, that the defendant you are considering  
9 murdered or aided and abetted the murder of a specified victim;  
10 and

11 Third, that the defendant you are considering  
12 committed the murder for the purpose of gaining entrance to, or  
13 increasing his position in, or maintaining his position in the  
14 enterprise, or for consideration for the receipt of or a  
15 promise and an agreement to pay anything of pecuniary or  
16 financial value.

17 The first element the government must prove beyond a  
18 reasonable doubt is that the enterprise alleged in the  
19 indictment, the Courtlandt Avenue Crew, existed and engaged in  
20 racketeering activity. I previously instructed you on the  
21 meaning of the terms enterprise and racketeering activity, and  
22 you should apply those instructions here.

23 The second element the government must prove beyond a  
24 reasonable doubt is that the defendant you are considering  
25 committed or aided and abetted the commission of the specified

CBS3MER4

Jury Charge

1       murder. Specifically, for count four, the murder of Jason  
2       Correa on July 25, 2010; for count six, the murder of Carrel  
3       Ogarro on July 31, 2010; and for count eight, the murder of  
4       Delquan Alston on August 27, 2010.

5               The law on murder that is applicable to counts four,  
6       six, and eight is the New York State law regarding murder. To  
7       prove murder under New York State law, the government must  
8       prove beyond a reasonable doubt:

9               First, that the defendant you are considering caused  
10      the death of the named victim or aided and abetted the same;  
11      and

12               Second, that the defendant you are considering did so  
13      with the intent to cause the death of the named individual.

14               The first element that the government must prove  
15      beyond a reasonable doubt for you to find that the defendant  
16      you are considering committed murder under New York State law  
17      is that he caused death of the named victim.

18               For count four, the government must prove beyond a  
19      reasonable doubt that Earl Pierce caused the death of Jason  
20      Correa or aided and abetted the same. For count six the  
21      government must prove beyond a reasonable doubt that Joshua  
22      Meregildo caused the death of Carrel Ogarro or aided and  
23      abetted the same. For count eight the government must prove  
24      beyond a reasonable doubt that Melvin Colon caused the death of  
25      Delquan Alston or aided and abetted the same.

CBS3MER4

Jury Charge

1           To prove that the defendant you are considering caused  
2 the victim's death, the government must prove that the  
3 defendant's conduct is a sufficiently direct cause of death of  
4 the victim. A person's conduct is a sufficiently direct cause  
5 of death when the conduct is an actual contributory cause of  
6 the death, and when the death was a reasonably foreseeable  
7 result of the conduct.

8           A person's conduct is an actual contributory cause of  
9 the death of another when the conduct forged a link in the  
10 chain of causes that actually brought about the death. In  
11 other words, when the conduct set in motion or continued in  
12 motion the events that ultimately resulted in the death. An  
13 obscure or merely probable connection between the conduct and  
14 the death will not suffice.

15           At the same time, if a person's conduct is an actual  
16 contributory cause of the death of another, then it does not  
17 matter that such conduct is not the sole cause of the death.

18           Death is a reasonably foreseeable result of a person's  
19 conduct when the death should have been foreseen as being  
20 reasonably related to the actor's conduct. It is not required  
21 that the death was the inevitable result or even the most  
22 likely result.

23           Death is defined as irreversible cessation of  
24 heartbeat and respiration, or when these functions are  
25 maintained solely by extraordinary mechanical means, an

CBS3MER4

Jury Charge

1 irreversible cessation of all functions of the entire brain,  
2 including the brain stem.

3 The second element that the government must prove  
4 beyond a reasonable doubt for you to find that the defendant  
5 you are considering committed murder under New York State law  
6 is that he intended to cause the death of another person.

7 A person acts intentionally with respect to a result  
8 or to conduct described by a statute defining an offense when  
9 his conscious objective is to cause such result or engage in  
10 such conduct. Intent does not require premeditation or  
11 advanced planning. The intent can be formed, and need only  
12 exist in the very moment the person engages in prohibited  
13 conduct or acts to cause the prohibited result, and not at an  
14 earlier time. Intent can be inferred by a person's conduct.  
15 You are permitted, but not required, to infer that a person  
16 intends the natural and probable consequences of his own acts.

17 The last element the government must prove beyond a  
18 reasonable doubt on counts four, six, and eight is that the  
19 defendant you are considering acted for the purpose of gaining  
20 entrance to, maintaining a position in, or increasing a  
21 position in the enterprise or in consideration for the receipt  
22 of or a promise or an agreement to pay anything of pecuniary or  
23 financial value.

24 In considering whether the government has proved that  
25 a defendant committed the crime alleged for the purpose of

CBS3MER4

Jury Charge

1 gaining entrance to or maintaining or increasing his position  
2 in the enterprise, you should give these words their ordinary  
3 meaning.

4 The government may satisfy this element in two ways.  
5 First, the government may satisfy this element if it proves  
6 that the defendant's general purpose in committing the crime in  
7 question was to gain entrance to, increase his position in, or  
8 maintain his position in the Courtlandt Avenue Crew.

9 Self-promotion may not have been the defendant's only or even a  
10 primary concern if the crime was committed as an integral  
11 aspect of membership in the enterprise. It is not necessary  
12 that the defendant be a formal member of the enterprise. The  
13 motive requirement is satisfied if the defendant committed the  
14 crime because it was in furtherance of his membership in the  
15 enterprise or would allow him to gain entrance to the  
16 enterprise or because he knew it was expected of him by reason  
17 of the defendant's association with the enterprise or because  
18 it would enhance the defendant's position or prestige within  
19 the enterprise. These examples are by way of illustration and  
20 are not exhaustive.

21 Alternatively, the government may satisfy this element  
22 if it proves that a defendant committed the crime in  
23 consideration of the receipt of or a promise and an agreement  
24 to pay anything of pecuniary or financial value from the  
25 enterprise. This motive requirement is satisfied if the

CBS3MER4

Jury Charge

1 defendant committed the crime in exchange for money. This is  
2 just one example and is not exhaustive.

3 The words "promise or agreement to pay something of  
4 pecuniary value from the enterprise" should be given their  
5 ordinary meaning. That is, the defendant believed he would  
6 receive something valuable from the enterprise for committing  
7 the murder.

8 The defendant you are considering may also be  
9 convicted of count four, six, or eight if you find that he  
10 aided and abetted the killing at issue. I've already explained  
11 the concept of aiding and abetting thoroughly, and you should  
12 apply any previous instructions on that subject.

13 There is another theory of liability you may consider  
14 in determining whether the government proved beyond a  
15 reasonable doubt that Earl Pierce committed the murder charged  
16 in count four which is called co-conspirator liability. As I  
17 instructed you earlier, you may not consider this theory of  
18 liability against any other defendant for any other count  
19 unless specifically instructed.

20 To meet its burden of proof of count four for  
21 co-conspirator liability, the government must prove each of the  
22 following five elements beyond a reasonable doubt:

23 First, that someone committed the murder of Jason  
24 Correa as charged in the count four;

25 Second, that the person you find actually committed

CBS3MER4

Jury Charge

1 the killing was a member of the conspiracy to murder in aid of  
2 racketeering charged in count three;

3 Third, that this co-conspirator committed the murder  
4 of Jason Correa in furtherance of the conspiracy charged in  
5 count three;

6 Fourth, that Earl Pierce was a member of the  
7 conspiracy to murder in aid of racketeering charged in count  
8 three at the time of the killing; and

9 Fifth, that Earl Pierce could reasonably have foreseen  
10 that one or more of his co-conspirators might commit the  
11 killing.

12 If the government proves all five of these elements  
13 beyond a reasonable doubt, then you may find Earl Pierce guilty  
14 of the murder charged in count four, even if he did not  
15 personally participate in the acts constituting the crime or  
16 did not have actual knowledge of it.

17 To sustain its burden of proof on counts three, five,  
18 seven, nine and 11, the government must prove beyond a  
19 reasonable doubt each of the following elements:

20 First, that there existed as charged in the indictment  
21 an enterprise engaged in racketeering activity as I've  
22 previously defined that term for you;

23 Second, that the defendant you are considering  
24 conspired to commit the crime alleged; and

25 Third, that the defendant you are considering

CBS3MER4

Jury Charge

1 conspired to commit the crime alleged for the purpose of  
2 gaining access to, increasing his position in, or maintaining  
3 his position in the enterprise, or for consideration of the  
4 receipt of or a promise and an agreement to pay anything of  
5 pecuniary or financial value.

6 The first element the government must prove beyond a  
7 reasonable doubt is that the enterprise alleged in the  
8 indictment, the Courtlandt Avenue Crew, existed and engaged in  
9 racketeering activity. I previously instructed you on the  
10 meaning of the terms enterprise and racketeering activity, and  
11 you should apply those instructions here.

12 The second element the government must prove beyond a  
13 reasonable doubt is that the defendant you are considering  
14 conspired to commit the crime alleged. Specifically, for count  
15 three, the conspiracy to murder members of the Melrose  
16 Organization on July 25, 2010; for count five, the murder of  
17 Carrel Ogarro on July 31, 2010; for count seven, the murder of  
18 Delquan Alston on August 27, 2010; for count nine, the murder  
19 of members of the 321 Organization from July 2010 to  
20 September 2010; and for count 11, the murder of members of the  
21 Maria Lopez Crew from August 2010 to September 2011.

22 The law on murder and conspiracy that is applicable to  
23 counts three, five, seven, nine and 11, is the New York State  
24 law regarding murder and conspiracy. I previously instructed  
25 you on the elements of murder under New York State law in

CBS3MER4

Jury Charge

1 connection with counts four, six, and eight. Those  
2 instructions apply here as well.

3 To prove conspiracy under New York State law, the  
4 government must prove beyond a reasonable doubt:

5 First, that the defendant you are considering agreed  
6 with one or more persons to engage in or cause the performance  
7 of the murder;

8 Second, that the defendant you are considering did so  
9 with intent that such murder be performed; and

10 Third, that the defendant or one of the people with  
11 whom he agreed to engage in or cause the performance of the  
12 conduct committed an overt act in furtherance of the  
13 conspiracy.

14 I previously have instructed you on the meaning of  
15 intent and you should follow those instructions here.

16 An overt act is an independent act that tends to carry  
17 out the conspiracy. The overt act can be, but need not be, the  
18 commission of the crime that was the object of the conspiracy.  
19 The agreement to engage in or cause the performance of a crime  
20 is not itself an overt act.

21 The last element the government must prove beyond a  
22 reasonable doubt on counts three, five, seven, nine, and 11 is  
23 that the defendant you are considering conspired to commit the  
24 crime alleged for the purpose of gaining entrance to,  
25 maintaining a position in, or increasing a position in the

CBS3MER4

Jury Charge

1 enterprise, or in consideration for the receipt of or a promise  
2 or an agreement to pay anything of pecuniary or financial  
3 value.

4 I previously instructed you on these terms in  
5 connection with count four, six, and eight, and you should  
6 apply those instructions here.

7 Counts 17, 18, and 19 each allege murder through the  
8 use of a firearm against a different defendant. As I will  
9 explain in more detail in a moment, each of these charges  
10 relate to a specific murder in aid of racketeering charge and  
11 can only be considered if you find that defendant guilty of  
12 that offense.

13 Count 17 charges that Earl Pierce, in the course of  
14 and in furtherance of the murder of Jason Correa in aid of  
15 racketeering charged in count four, caused the death of Jason  
16 Correa through the use of a firearm in circumstances that  
17 qualify as murder.

18 Count 18 charges that Joshua Meregildo, in the course  
19 of and in furtherance of the murder of Carrel Ogarro in aid of  
20 racketeering charged in count six, caused death of Carrel  
21 Ogarro through the use of a firearm in circumstances that  
22 qualify as murder.

23 Count 19 charges that Melvin Colon, in the course of  
24 and in furtherance of the murder of Delquan Alston in aid of  
25 racketeering charged in count eight, caused the death of

CBS3MER4

Jury Charge

1 Delquan Alston through the use of a firearm in circumstances  
2 that qualify as murder.

3 The relevant federal statute provides a person who, in  
4 the course of a violation of a firearms offense causes the  
5 death of a person through the use of a firearm, shall be guilty  
6 of a crime.

7 To meet its burden of proving counts 17, 18, and 19,  
8 the government must prove each of the following three elements  
9 beyond a reasonable doubt:

10 First, that the defendant you are considering  
11 unlawfully, wilfully and knowingly committed the murder in aid  
12 of racketeering that he is charged with;

13 Second, that in the course of committing that offense,  
14 the defendant you are considering caused or aided and abetted  
15 in causing the death of the respective victim through the use  
16 of a firearm;

17 Third, that the death of that respective victim  
18 qualifies as a murder as I will define that term for you in a  
19 moment.

20 The first element the government must prove beyond a  
21 reasonable doubt is that the defendant you are considering  
22 committed the murder in aid of racketeering charged against  
23 him. I instruct you this element is satisfied against Earl  
24 Pierce in your consideration of count 17 if and only if you  
25 find him guilty of committing or aiding and abetting count

CBS3MER4

Jury Charge

1 four.

2 I instruct you this element is satisfied against  
3 Joshua Meregildo in your consideration of count 18 if and only  
4 if you find him guilty of committing or aiding and abetting  
5 count six.

6 I instruct you that this element is satisfied against  
7 Melvin Colon in your consideration of count 19 if and only if  
8 you find him guilty of committing or aiding and abetting count  
9 eight.

10 The second element the government must prove beyond a  
11 reasonable doubt that the defendant you are considering caused  
12 the death of the named victim.

13 For count 17, the government must prove beyond a  
14 reasonable doubt that Earl Pierce caused the death of Jason  
15 Correa through the use of a firearm.

16 For count 18, the government must prove beyond a  
17 reasonable doubt that Joshua Meregildo caused the death of  
18 Carrel Ogarro through the use of a firearm.

19 In count 19, the government must prove beyond a  
20 reasonable doubt that Melvin Colon caused the death of Delquan  
21 Alston through the use of a firearm.

22 A defendant causes the death of another person if his  
23 conduct had such an effect in producing that person's death as  
24 to lead a reasonable person to regard the defendant's conduct  
25 as a cause of death. The death of a person may have more than

CBS3MER4

Jury Charge

1 one cause. The government need not prove that the defendant's  
2 conduct was the only cause of death. Rather, the government  
3 must prove that the conduct of the defendant was a substantial  
4 factor in causing the victim's death.

5 The third element the government must prove beyond a  
6 reasonable doubt is that the death of the named victim  
7 qualifies as murder. In considering counts 17, 18, and 19 you  
8 should apply the following definition of murder:

9 Under the federal criminal code, murder is the  
10 unlawful killing of a human being with malice aforethought.  
11 Every murder perpetrated by any kind of willful, deliberate,  
12 malicious, and premeditated killing qualifies as murder.

13 The government may establish malice aforethought by  
14 proving that a defendant had a premeditated design or intent to  
15 kill the victim. The government must prove malice aforethought  
16 with competent evidence beyond a reasonable doubt.

17 There is another theory you may consider in  
18 determining whether the government proved beyond a reasonable  
19 doubt that Earl Pierce committed the murder charged in count 17  
20 which is called co-conspirator liability. As I instructed you  
21 earlier, you may not consider this theory of liability against  
22 any other defendant for any other count unless specifically  
23 instructed.

24 To meet its burden of proof of count 17 for  
25 co-conspirator liability, the government must prove each of the

CBS3MER4

Jury Charge

1 following five elements beyond a reasonable doubt:

2                 First, that someone committed the murder of Jason  
3 Correa through the use of a firearm as charged in count 17;

4                 Second, that the person or persons you find actually  
5 committed the murder was a member of the conspiracy to murder  
6 in aid of racketeering charged in count three;

7                 Third, this co-conspirator committed the killing in  
8 furtherance of the conspiracy charged in count three;

9                 Fourth, that Earl Pierce was a member of the  
10 conspiracy to murder in aid of racketeering charged in count  
11 three at the time of the killing; and

12                 Fifth, that Earl Pierce could reasonably have foreseen  
13 that one or more of his co-conspirators might commit the  
14 killing with the use of a firearm.

15                 If the government proves all five of these elements  
16 beyond a reasonable doubt, then you may find Earl Pierce guilty  
17 of the murder charged in count four, even if he did not  
18 personally participate in the acts constituting the crime or  
19 did not have actual knowledge of it.

20                 To meet its burden of proof on counts 10 and 12, the  
21 government must prove each of the following elements beyond a  
22 reasonable doubt:

23                 First, that there existed as charged in the indictment  
24 an enterprise engaged in racketeering activity;

25                 Second, that the defendant you are considering

1 CBS3MER4

Jury Charge

2 assaulted or attempted to murder another individual or aided  
3 and abetted the same.

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
(Continued on next page)

Cbs1mer5

Charge

1                   THE COURT: And third: The defendant you are  
2 considering committed the assault or attempted murder for the  
3 purpose of gaining entrance to, increasing his position in, or  
4 maintaining his position in the enterprise, or for  
5 consideration of the receipt of or a promise and an agreement  
6 to pay anything of pecuniary or financial value.

7                   The first element the government must prove beyond a  
8 reasonable doubt is that the enterprise alleged in the  
9 indictment -- the Courtlandt Avenue Crew -- existed and engaged  
10 in racketeering activity. I previously instructed you on the  
11 meaning of the terms "enterprise" and "racketeering activity,"  
12 and you should apply those instructions here.

13                   The second element the government must prove beyond a  
14 reasonable doubt is that the defendant you are considering  
15 committed the specified assault or attempted murder, or aided  
16 and abetted the assault or attempted murder -- specifically,  
17 for Count Ten, the assault or attempted murder of Tarean  
18 Joseph; and for Count Twelve, the assault or attempted murder  
19 of Jing Bao Jiang on September 8, 2010.

20                   While the assault and attempted murder are charged in  
21 the same count, they are separate offenses. The government is  
22 not required to prove both offenses. It sustains its burden if  
23 it proves that the defendant you are considering committed the  
24 assault, the attempted murder, or both offenses, and you should  
25 specify the offense or offenses that were proved by the

Cbs1mer5

Charge

1 government on the verdict form.

2 The law on attempted murder that is applicable to  
3 Counts Ten and Twelve is the New York State law regarding  
4 murder and attempt. Under New York State law, a person is  
5 guilty of an attempt to commit a crime when, with intent to  
6 commit a crime, he or she engages in conduct that tends to  
7 effect the commission of such crime. You should apply my  
8 previous instructions on murder and its specific terms under  
9 New York State law.

10 Thus, to prove attempted murder under New York State  
11 law, the government must prove beyond a reasonable doubt:

12 First: That the defendant you are considering  
13 attempted to cause the death of the named victim, or aided and  
14 abetted the same; and

15 Second: That the defendant you are considering did so  
16 with the intent to cause the death of the named victim.

17 The law on assault that is applicable to Counts Ten  
18 and Twelve is the New York State law regarding assault. Under  
19 New York State law, a person is guilty of assault if the  
20 government proves beyond a reasonable doubt either:

21 First: That the defendant you are considering caused  
22 physical injury to another person by means of a deadly weapon  
23 or dangerous instrument; and

24 Second, that he did so with intent to cause physical  
25 injury to another person.

Cbs1mer5

Charge

1 Or:

2 That the defendant you are considering caused serious  
3 physical injury to another person; and4 That he did so with the intent to cause serious  
5 physical injury to another person.6 You will be provided with a verdict form that will  
7 include spaces for you to indicate your determinations with  
8 respect to these theories of liability. Your finding as to a  
9 theory of liability must be beyond a reasonable doubt and must  
10 be unanimous in that all of you must agree on one, or both,  
11 theories.12 Now "physical injury" means impairment of physical  
13 condition or substantial pain.14 "Serious physical injury" means impairment of a  
15 person's physical condition that creates a substantial risk of  
16 death or causes death or serious and protracted disfigurement,  
17 protracted impairment of health, or protracted loss or  
18 impairment of the function of any bodily organ.19 A "deadly weapon" is any loaded weapon from which a  
20 shot, readily capable of producing death or other serious  
21 physical injury, may be discharged. I further instruct you  
22 that for a firearm to be considered a deadly weapon, it must be  
23 loaded and operable, although there is no requirement that the  
24 defendant knew it was loaded or operable at the time he  
25 possessed it.

Cbs1mer5

Charge

1                   A loaded firearm means any firearm loaded with  
2 ammunition that may be used to discharge such firearm or any  
3 firearm that is possessed by one who, at the same time,  
4 possesses a quantity of ammunition that may be used to  
5 discharge such firearm.

6                   A "dangerous instrument" is any instrument, article,  
7 or substance that, under the circumstances in which it is used,  
8 attempted to be used, or threatened to be used, is readily  
9 capable of causing death or other serious physical injury,  
10 although death or other serious physical injury need not in  
11 fact be caused.

12                  Under New York law, there is no requirement that the  
13 person who is injured be the same person who was intended to be  
14 injured. Thus, the intent element is satisfied when a  
15 defendant intends to cause physical injury, serious physical  
16 injury, or death to one person but instead injures another  
17 person.

18                  Third, the last element the government must prove  
19 beyond a reasonable doubt on Counts Ten and Twelve is that the  
20 defendant you are considering acted for the purpose of gaining  
21 entrance to, maintaining a position in, or increasing a  
22 position in the enterprise, or in consideration for the receipt  
23 of or a promise or an agreement to pay anything of pecuniary or  
24 financial value. My previous instructions to you on this  
25 element in connection with Counts Four, Six, and Eight apply

Cbs1mer5

Charge

1 here as well.

2 Now the defendant you are considering may also be  
3 convicted of Count Ten or Twelve if you find that he aided and  
4 abetted the assault or attempted murder at issue. I've already  
5 explained the concept of aiding and abetting thoroughly, and  
6 you should apply my previous instructions on this subject.

7 You may also consider co-conspirator liability against  
8 Joshua Meregildo on Count Ten and Melvin Colon on Count Twelve.  
9 Again, you may not consider this theory of liability against  
10 any other defendant or any other count unless specifically  
11 instructed.

12 Now to meet its burden of proof against Joshua  
13 Meregildo on Count Ten for co-conspirator liability, the  
14 government must prove each of the following five elements  
15 beyond a reasonable doubt:

16 First: That someone assaulted or attempted to murder  
17 Tarean Joseph.

18 Second: That the person you find actually committed  
19 the assault or attempted murder was a member of the conspiracy  
20 to murder in aid of racketeering charged in Count Nine;

21 Third: That this co-conspirator committed the assault  
22 or attempted murder in furtherance of the conspiracy charged in  
23 Count Nine;

24 Fourth: That Joshua Meregildo was a member of the  
25 conspiracy charged in Count Nine at the time of the killing;

Cbs1mer5

Charge

1 and

2               Fifth: That Joshua Meregildo could reasonably have  
3 foreseen that one of more of his co-conspirators might commit  
4 the assault or attempted murder.

5               If the government proves all five of these elements  
6 beyond a reasonable doubt, then you may find Joshua Meregildo  
7 guilty of the assault and attempted murder charged in Count  
8 Ten, even if he did not personally participate in the acts  
9 constituting the crime or did not have actual knowledge of it.

10              To meet its burden of proof against Melvin Colon on  
11 Count Twelve for co-conspirator liability, the government must  
12 prove each of the following five elements beyond a reasonable  
13 doubt:

14              First: That someone assaulted or attempted to murder  
15 Jing Bao Jiang;

16              Second: That the person you find actually committed  
17 the assault or attempted murder was a member of the conspiracy  
18 to murder in aid of racketeering charged in Count Eleven;

19              Third: That this conspirator committed the assault or  
20 attempted murder in furtherance of the conspiracy charged in  
21 Count Eleven;

22              Fourth: That Melvin Colon was a member of the  
23 conspiracy charged in Count Eleven at the time of the shooting;  
24 and

25              Fifth: That Melvin Colon could reasonably have

Cbs1mer5

Charge

1 foreseen that one or more of his co-conspirators might commit  
2 the assault or attempted murder.

3 If the government proves all five of these elements  
4 beyond a reasonable doubt, then you may find Melvin Colon  
5 guilty of the assault and attempted murder charged in Count  
6 Twelve, even if he did not personally participate in the acts  
7 constituting the crimes or did not have actual knowledge of  
8 them.

9 Now I'd like to back up one page for a moment to  
10 page 108, and the fourth element with respect to Joshua  
11 Meregildo should not refer to a killing, it should refer to a  
12 shooting. So the fourth element for Mr. Meregildo is that  
13 Joshua Meregildo was a member of the conspiracy charged in  
14 Count Nine at the time of the shooting.

15 Count Twenty charges that Joshua Meregildo and Earl  
16 Pierce, during and in relation to the assault or attempted  
17 murder in aid of racketeering -- as charged in Count Ten --  
18 knowingly used or carried firearms, possessed firearms in  
19 furtherance of such crime, or aided and abetted the use,  
20 carrying, or possession of firearms. You may not consider  
21 Count Twenty-two unless you first determine that the defendant  
22 you are considering is guilty of Count Ten.

23 MR. BECKER: Your Honor, respectfully, you said Count  
24 Twenty-two.

25 THE COURT: Yes. Thank you, Mr. Becker.

Cbs1mer5

Charge

1 Let me begin again on that general instruction. We're  
2 discussing now Count Twenty.

3 Count Twenty charges that Joshua Meregildo and Earl  
4 Pierce, during and in relation to the assault or attempted  
5 murder in aid of racketeering -- as charged in Count Ten --  
6 knowingly used or carried firearms, possessed firearms in  
7 furtherance of such crime, or aided and abetted the use,  
8 carrying, or possession of firearms. You may not consider  
9 Count Twenty unless you first determine that the defendant you  
10 are considering is guilty of Count Ten.

11 Count Twenty-one charges that Melvin Colon, during and  
12 in relation to the conspiracy to commit murder in aid of  
13 racketeering -- as charged in Count Eleven -- knowingly used or  
14 carried firearms, possessed firearms in furtherance of such  
15 crime, or aided and abetted the use, carrying, or possession of  
16 firearms. You may not consider Count Twenty unless you first  
17 determine that Melvin Colon is guilty of Count Eleven.

18 MR. DINNERSTEIN: Your Honor, also, that should be  
19 Count Twenty-one.

20 THE COURT: Yes. Thank you.

21 You may not consider Count Twenty-one unless you first  
22 determine that Melvin Colon is guilty of Count Eleven.

23 Relevant federal statute provides:

24 It shall be a crime for any person, "during and in  
25 relation to any crime of violence or drug trafficking crime..."

Cbs1mer5

Charge

1 to use or carry a firearm," or, "in furtherance of any such  
2 crime, to possess a firearm."

3 To meet its burden of proof on Counts Twenty and  
4 Twenty-one, the government must prove the following three  
5 elements beyond a reasonable doubt:

6 First: That on or about the dates alleged in the  
7 indictment, the defendant you are considering used, carried, or  
8 possessed a firearm, or aided and abetted the use, carrying, or  
9 possession of a firearm;

10 Second: That the defendant you are considering used  
11 or carried the firearm during and in relation to a crime of  
12 violence or that the defendant possessed the firearm in  
13 furtherance of such crime; and

14 Third: That the defendant acted knowingly,  
15 unlawfully, and wilfully.

16 The first element the government must prove beyond a  
17 reasonable doubt is that on or about the dates set forth in the  
18 indictment, the defendant you are considering used, carried, or  
19 possessed a firearm, or aided or abetted its use, carrying, or  
20 possession.

21 I previously defined the terms "firearm," "use,"  
22 "carry," "possession," and "possession in furtherance" during  
23 my charge on Count Twenty-two, and you should apply those  
24 definitions again here.

25 The second element that the government must prove

Cbs1mer5

Charge

1 beyond a reasonable doubt is that the defendant you are  
2 considering used or carried a firearm during and in relation to  
3 a crime of violence, or possessed a firearm in furtherance of  
4 such crime. You are instructed that the assault and attempted  
5 murder charged in Count Ten, and the conspiracy to murder in  
6 aid of racketeering as charged in Count Eleven, are crimes of  
7 violence.

8 The third element the government must prove beyond a  
9 reasonable doubt is that the defendant you are considering knew  
10 that he was carrying or using or possessing a firearm and he  
11 acted wilfully in doing so.

12 I previously instructed you about the definitions of  
13 the terms of this element when I charged you on Count  
14 Twenty-two, and you should continue to apply those definitions  
15 here.

16 If, and only if, you find a defendant guilty of Count  
17 Twenty or Twenty-one, then you must determine special findings  
18 for that defendant on that count. Specifically, you must  
19 determine whether during a defendant's use, carrying, or  
20 possession of the firearm, he brandished or discharged that  
21 firearm or whether he did not. You will be provided with a  
22 verdict form that will include spaces for you to indicate your  
23 determinations with respect to these issues.

24 "Brandish" means that all or part of the weapon was  
25 displayed or the presence of the weapon was otherwise made

Cbs1mer5

Charge

1 known to another person to intimidate that person, regardless  
2 of whether the weapon was directly visible to that person. The  
3 weapon does not have to be directly visible, but it must be  
4 present.

5 "Discharge" means to fire or shoot.

6 Your finding as to brandishing or discharging must be  
7 beyond a reasonable doubt. In addition, it must be unanimous  
8 in that all of you must agree that the firearm was brandished  
9 or discharged.

10 Thus, for example, if all of you agree that a  
11 defendant discharged the firearm during the crime, you should  
12 indicate "yes" to that question on the verdict sheet. And if  
13 you also believe that a defendant brandished the firearm during  
14 that crime, you should indicate "yes" to that question as well.  
15 If, however, some jurors conclude that the defendant brandished  
16 the firearm and the rest of the jurors conclude that he  
17 discharged it, you should indicate "no" on both questions  
18 because your finding on each determination would not be  
19 unanimous.

20 Now the defendants who are charged in Counts Twenty  
21 and Twenty-one are also charged in aiding and abetting the use,  
22 carrying, or possession of a firearm in Twenty and Twenty-one.  
23 I've already explained the concept of aiding and abetting  
24 firearm possession thoroughly.

25 To convict the defendant you are considering of aiding

Cbs1mer5

Charge

1 and abetting another's use of, carrying of, or possession of a  
2 firearm, it is not enough to find that the defendant performed  
3 an act to facilitate or encourage the commission of the crime  
4 of violence associated with that firearm charge with only the  
5 knowledge that a firearm would be used or carried in the  
6 commission of the crime. Instead, you must find that the  
7 defendant performed some act that facilitated the actual using  
8 or carrying of a firearm during the charged crime of violence  
9 or the possession of a firearm in relation to the charged crime  
10 of violence.

11 For example, if you find that the defendant you are  
12 considering directed another person to use, carry, or possess a  
13 gun in the commission of the charged crime of violence, or made  
14 such a gun available to the other person, then that defendant  
15 aided and abetted the other person's use of a firearm. Or, if  
16 you find that the defendant you are considering was present at  
17 the scene during the commission of the charged crime of  
18 violence, you may consider whether that defendant's conduct at  
19 the scene facilitated or promoted the carrying of a gun and  
20 thereby aided and abetted the other person's carrying of the  
21 firearm. These examples are offered only by way of  
22 illustration and are not meant to be exhaustive.

23 You may also consider co-conspirator liability against  
24 Joshua Meregildo on Count Twenty. Again, you may not consider  
25 this theory of liability against any other defendant for any

Cbs1mer5

Charge

1 other count unless specifically instructed.

2 To meet its burden of proof against Joshua Meregildo  
3 on Count Twenty for co-conspirator liability, the government  
4 must prove each of the following five elements beyond a  
5 reasonable doubt:

6 First: That someone used, carried, or possessed a  
7 firearm during and in furtherance of the assault or attempted  
8 murder of Tarean Joseph;

9 Second: That the person or persons you find actually  
10 committed the assault or attempted murder was or were members  
11 of a conspiracy to murder in aid of racketeering charged in  
12 Count Nine;

13 Third: That this co-conspirator committed the assault  
14 or attempted murder in furtherance of the conspiracy charged in  
15 Count Nine;

16 Fourth: That Joshua Meregildo was a member of the  
17 conspiracy charged in Count Nine at the time of the assault or  
18 attempted murder; and

19 Fifth: That Joshua Meregildo was a member of the  
20 conspiracy charged in Count Nine at the time of the assault or  
21 attempted murder.

22 Excuse me. Fifth: That Joshua Meregildo could  
23 reasonably have foreseen that one or more of his  
24 co-conspirators might commit the assault or attempted murder.

25 If the government proves all five of these elements

Cbs1mer5

Charge

1 beyond a reasonable doubt, then you may find Joshua Meregildo  
2 guilty of the use, carrying, or possession in connection with a  
3 crime of violence charged in Count Twenty, even if he did not  
4 personally participate in the acts constituting the crime or  
5 did not have actual knowledge of it.

6 Members of the jury, I think it's time for a break.  
7 We're going to take a brief luncheon recess at this time,  
8 approximately 30 minutes.

9 Keep an open mind, come to no conclusions, don't  
10 discuss the case. Don't discuss anything about it. Talk about  
11 anything but what has gone on in this courtroom.

12 Please recess the jury.

13 THE CLERK: Come to order. Jury exiting.

14 (Jury excused)

15 THE COURT: Any issues?

16 MS. HELLER: Your Honor, we had two things that we  
17 noticed. One on page 98, line 22. It's Count Four when it  
18 should actually read Count Seventeen, and I would have stood up  
19 but I didn't know whether that was protocol until defense  
20 counsel started doing it. So that's just a minor error.

21 And then the second thing we noticed was on page 115,  
22 the brandish or discharge charge. The only thing we would  
23 respectfully ask to be inserted here on line 7 would be  
24 "brandished or discharged that firearm or aided and abetted the  
25 brandishing or discharge of that firearm," because it isn't

Cbs1mer5

Charge

1 clear at all right now that aiding and abetting also applies to  
2 this special finding, when indeed of course it does. And we  
3 apologize for not noticing that at an earlier stage.

4 MR. LEE: Judge, I don't know, if -- I may respond to  
5 that last point on page 115. I don't know if that matches  
6 what's in the indictment.

7 MS. HELLER: It absolutely does. Section 2 is charged  
8 along with the violation that's charged.

9 THE COURT: All right. Now with respect to the  
10 government's two modifications, is there any objection to  
11 simply making those corrections in the printed copies of the  
12 charge and substituting them into the jurors' notebooks as  
13 opposed to returning to those charges?

14 MR. MIEDEL: No objection.

15 MR. LEE: No objection, your Honor.

16 MR. DINNERSTEIN: No objection.

17 MR. BECKER: I certainly have no objection.

18 MS. HELLER: As to our first change, we certainly  
19 don't object.

20 As to the second change, we I think would prefer a  
21 brief -- just as your Honor did when you returned to two pages  
22 prior and made that change, something very quick.

23 THE COURT: All right. I'll put it on the record and  
24 we'll make the change.

25 MR. BECKER: Your Honor, one very quick note. I

Cbs1mer5

Charge

1 seem -- with respect to the verdict sheet. I seem to have a  
2 recollection earlier in the trial that the court had said that  
3 it would change the "guilty" references to "guilty beyond a  
4 reasonable doubt." I may be mistaken about that, but I seem to  
5 have a recollection that the court did say that.

6 Your Honor, if I'm incorrect, I stand corrected. I  
7 just didn't want to leave it be if in fact that was the court's  
8 intention.

9 MR. FEE: Your Honor, our recollection -- and it's  
10 just that, a recollection -- is that that related to portions  
11 of the charge, not to the verdict sheet.

12 THE COURT: Yeah. I am satisfied with the verdict  
13 sheet as it's configured, and in that regard, during the break  
14 I had an opportunity to consider further Mr. Miranda's request  
15 to modify questions 13.1 and 13.2 on the verdict sheet. I'm  
16 going to deny Mr. Miranda's request. Question 13.1 and 13.2 of  
17 the verdict sheet are phrased appropriately for the jury.  
18 Sections 1B1.3(a)(1)(A) and (B) of the Sentencing Guidelines  
19 hold a defendant accountable for his individual acts and those  
20 acts which were reasonably foreseeable to him during a  
21 conspiracy. Removing the reference to his personal involvement  
22 in the verdict sheet invites the jury to disregard his  
23 individual acts when calculating drug quantity, which is  
24 improper.

25 MR. BECKER: Your Honor, I certainly wasn't asking the

Cbs1mer5

Charge

1 court to remove any reference to his individual acts. I was  
2 merely -- and if that's the impression I gave the court, I'm  
3 sorry. What I thought I argued was that it has to be either  
4 that he personally distributed or possessed with intent to  
5 distribute, which is his personal conduct, or that it was  
6 reasonably foreseeable to him. I wasn't suggesting that the  
7 court should strike any reference to his personal conduct.

8 THE COURT: All right. Anything further?

9 MR. DINNERSTEIN: Yes. I have one thing. And  
10 actually, I think it does have to be corrected.

11 The shooting of Mr. Jiang -- this is page 101, line 8.  
12 It was September 8<sup>th</sup>, 2011. Actually, if it was 2010, my  
13 client would have been in prison and would have had an alibi  
14 defense, but unfortunately, that's an incorrect date.

15 MS. HELLER: We agree with that, of course.

16 THE COURT: All right. I'll make that change as well.

17 All right. We'll reconvene at 1:45.

18 (Luncheon recess)

19

20

21

22

23

24

25

CBS3MER6

Jury Charge

1 (In open court)

2 THE COURT: Over the luncheon recess I've made one  
3 change in the jury verdict sheet on page three, question 10.2,  
4 I've added beyond a reasonable doubt to that question so that  
5 it is consistent with 10.1. My deputy is circulating copies of  
6 the verdict sheet and we're substituting in the jurors' binders  
7 this latest jury verdict sheet.8 MR. MIEDEL: Your Honor, as to the verdict sheet, one  
9 minor issue. I don't know if it is so minor, but one issue.  
10 On question 13.3 which is on page five.

11 THE COURT: Yes.

12 MR. MIEDEL: It reads "What amount of crack cocaine  
13 was involved in the narcotics conspiracy." And I think that to  
14 be consistent with 13.1 and 13.2, and especially because it  
15 refers to each defendant, it should read something like "What  
16 amount of crack cocaine was each defendant either personally  
17 involved in or was reasonably foreseeable to." Because it's  
18 not -- because it refers to each defendant, it is not what was  
19 the overall amount of crack cocaine in the conspiracy. It's  
20 what applies to each defendant.

21 THE COURT: What about that, Ms. Heller?

22 MS. HELLER: Can we just have a moment, your Honor?

23 THE COURT: Yes. I think he's right. It would be  
24 nice if at some point you people would bring this stuff up.  
25 It's really ridiculous. Let's bring in the jury so we can keep

CBS3MER6

Jury Charge

1 going.

2 Change the verdict sheet. Take all those verdict  
3 sheets out of the binder right now, Leigh.

4 MS. HELLER: It is in the charge.

5 THE COURT: That goes into the dust bin of history and  
6 run another verdict sheet before somebody else thinks -- any  
7 other ideas? Unless the government comes up with some  
8 argument, I'm changing 13.3.9 MS. HELLER: Your Honor, we agree. The language is in  
10 the charge so it's fine.

11 (Jury present)

12 THE COURT: Good afternoon, members of the jury.  
13 Members of the jury, before we continue with the reading, I  
14 want to return you to page 115 which is the charge concerning  
15 special finding on brandishing or discharge of a firearm. And  
16 I am making a change in the first paragraph of that charge to  
17 include the concept of aiding and abetting. So, the first  
18 paragraph will reads as follows:19 If and only if you find the defendant guilty of count  
20 20 or 21, then you must determine special findings for that  
21 defendant on that count. Specifically, you must determine  
22 whether during a defendant's use, carrying or possession of the  
23 firearm, he brandished or discharged that firearm, or aided and  
24 abetted the same, or whether he did not. You will be provided  
25 with a verdict form that will include spaces for you to

CBS3MER6

Jury Charge

1 indicate your determinations with respect to these issues.

2 Now, members of the jury, I'd like to turn to page 125  
3 which addresses count one, the racketeering charge.

4 MS. HELLER: Your Honor, I believe we left off at page  
5 120.

6 THE COURT: 120?

7 MS. HELLER: I'm sorry 118. 118.

8 THE COURT: Yes. Excuse me. You're right.

9 Count two. The racketeering conspiracy. Count two  
10 charges Joshua Meregildo, Melvin Colon, Earl Pierce, and  
11 Nolbert Miranda with a racketeering conspiracy. Specifically,  
12 count two reads as follows:

13 From at least in or about Spring 2010 up to and  
14 including September 2011, Joshua Meregildo, Melvin Colon, Earl  
15 Pierce, and Nolbert Miranda, and others known and unknown,  
16 being persons employed by or associated with the Courtlandt  
17 Avenue Crew, knowingly and intentionally combined, conspired,  
18 confederated, and agreed together and with others to violate  
19 the racketeering laws of the United States by conducting and  
20 participating directly and indirectly in the conduct of the  
21 affairs of the enterprise which were engaged in and the  
22 activities of which affected interstate and foreign commerce  
23 through a pattern of racketeering activity consisting of  
24 multiple acts involving murder and multiple acts involving the  
25 distribution of controlled substances.

CBS3MER6

Jury Charge

1                   As I instructed you earlier, a conspiracy is a kind of  
2 criminal partnership, an agreement of two or more persons to  
3 join together to accomplish some unlawful purpose. It is an  
4 entirely separate and different offense from the substantive  
5 crime that may be the objective of the conspiracy.

6                   You may find a defendant's guilty of the crime of  
7 conspiracy even if you find that the substantive crime that was  
8 the object of the conspiracy was never actually committed. Of  
9 course, if a defendant participates in a conspiracy, and the  
10 crime or crimes that were the subject of the conspiracy were  
11 committed, the defendant may be guilty of both the conspiracy  
12 and the substantive crime. The point is simply that the crime  
13 or crimes that were the objective of the conspiracy need not  
14 have been actually committed for a conspiracy to exist.

15                  To meet its burden of proving a defendant guilty of  
16 count two, the government must establish each of the following  
17 four elements beyond a reasonable doubt:

18                  First, that the enterprise existed;

19                  Second, that the defendant you are considering was  
20 employed by or knowingly agreed to associate himself with the  
21 enterprise;

22                  Third, that he unlawfully, wilfully and knowingly  
23 conspired with at least one other person to participate in the  
24 conduct of the affairs of that enterprise through a pattern of  
25 racketeering activity; and

CBS3MER6

Jury Charge

1                  Fourth, that the enterprise affected interstate or  
2 foreign commerce.

3                  The first element the government must prove beyond a  
4 reasonable doubt is that the enterprise alleged in the  
5 indictment, the Courtlandt Avenue Crew, existed and engaged in  
6 racketeering activity. I previously instructed you on the  
7 meaning of the terms enterprise and racketeering activity, and  
8 you should apply those instructions here.

9                  The second element the government must prove beyond a  
10 reasonable doubt is that the defendant you are considering was  
11 associated with or was employed by the enterprise. The  
12 government must prove that at some time during the period  
13 charged in the indictment the defendant was associated with or  
14 was employed by the enterprise. It's not required that the  
15 government prove that the defendant was associated with or  
16 employed by the enterprise for the entire time that the  
17 enterprise existed. The government must also prove that the  
18 defendant's association with the enterprise was knowing, that  
19 is, made with knowledge of the existence of the criminal  
20 enterprise through a general awareness of its nature and scope.  
21 The government need not prove that the defendant you are  
22 considering agreed with every other member of the enterprise,  
23 knew all the other members of the enterprise, or had full  
24 knowledge of all the details of the enterprise. However, in  
25 proving this element, the government must prove beyond a

CBS3MER6

## Jury Charge

1 reasonable doubt that the defendant you are considering was  
2 connected to the enterprise in some meaningful way, and that  
3 the defendant knew the general nature of the enterprise and  
4 knew that the enterprise existed beyond his individual role.  
5 If you find that the government has proven this element beyond  
6 a reasonable doubt, then the second element is satisfied.

7 The third element the government must prove beyond a  
8 reasonable doubt is that the defendant you are considering  
9 unlawfully, wilfully and knowingly conspired or agreed to  
10 participate in the conduct of the affairs of the enterprise  
11 through a pattern of racketeering activity. The government  
12 must prove that the defendant participated in some manner in  
13 the overall affairs of the enterprise and objectives of the  
14 conspiracy, and that he did so with the intent that he or  
15 another member or members of the conspiracy would commit two or  
16 more acts of racketeering as part of a pattern of racketeering  
17 activity.

18 For a conviction under count two, the government must  
19 prove that the defendant you are considering intended to  
20 further an endeavor which, if completed, would have satisfied  
21 all the elements of the substantive racketeering offense  
22 charged in count one. The government is not required to prove  
23 that the defendant personally committed or agreed to commit any  
24 act of racketeering, nor is it required to prove that any acts  
25 of racketeering actually occurred. Rather, the government must

CBS3MER6

Jury Charge

1 prove that the defendant agreed to participate in the  
2 enterprise with the knowledge and intent that at least one  
3 member of the racketeering conspiracy, which could be the  
4 defendant himself, would commit at least two racketeering acts  
5 in the conduct of the affairs of the enterprise.

6 I previously instructed you on the definitions of the  
7 terms unlawfully, wilfully, and knowingly, and you should apply  
8 those definitions here.

9 The fourth element the government must prove beyond a  
10 reasonable doubt is that the criminal enterprise itself, or the  
11 racketeering activities of those associated with it, had some  
12 effect on interstate or foreign commerce. This effect on  
13 interstate commerce could have occurred in any way and it need  
14 only have been minimal.

15 Interstate commerce includes the movement of goods,  
16 services, money, and individuals between states or between the  
17 United States and any foreign nation. You need not find a  
18 substantial effect on interstate commerce, nor is it necessary  
19 for you to find that the defendant knew the enterprise was  
20 engaged in interstate commerce, nor is it necessary that the  
21 effect on interstate commerce have been adverse to commerce.  
22 All that is necessary is that the activities of the enterprise  
23 affect interstate or foreign commerce in some minimal way. It  
24 is sufficient, for example, that in the course of the  
25 racketeering activities, members of the enterprise purchased

CBS3MER6

Jury Charge

1 goods or services that had an effect on interstate commerce,  
2 traveled interstate, used telephone facilities interstate or  
3 took money from businesses that had an effect on interstate  
4 commerce.

5 The commerce affected or potentially affected need not  
6 be lawful. Activities affecting or potentially affecting  
7 unlawful interstate activity such as drug dealing and  
8 trafficking fall within the purview of the statute.

9 Count one charges Joshua Meregildo, Melvin Colon, and  
10 Earl Pierce with racketeering. Specifically, count one reads  
11 as follows:

12 From at least in or about the Spring 2010, up to and  
13 including in or about September 2011, Joshua Meregildo, Melvin  
14 Colon, and Earl Pierce, and others, known and unknown, being  
15 persons employed by and associated with the Courtlandt Avenue  
16 Crew, which was engaged in, and the activities of which  
17 affected, interstate and foreign commerce, knowingly conducted  
18 and participated directly and indirectly in the conduct of the  
19 affairs of that enterprise through a pattern of racketeering  
20 activity.

21 To meet its burden of proving a defendant guilty of  
22 count one, the government must establish each of the following  
23 five elements beyond a reasonable doubt:

24 First, that the enterprise existed;

25 Second, that the defendant you are considering was

CBS3MER6

Jury Charge

1 employed by or knowingly agreed to associate himself with the  
2 enterprise;

3 Third, that he engaged in a pattern of racketeering  
4 activity;

5 Fourth, that he unlawfully, wilfully and knowingly  
6 participated in or conducted the affairs of that enterprise  
7 through a pattern of racketeering activity; and

8 Fifth, that the enterprise affected interstate or  
9 foreign commerce.

10 Now, the first element the government must prove  
11 beyond a reasonable doubt is that the enterprise alleged in the  
12 indictment, the Courtlandt Avenue Crew, existed and engaged in  
13 racketeering activity. I previously instructed you on the  
14 meaning of the terms enterprise and racketeering activity, and  
15 you should apply those instructions here.

16 The second element the government must prove beyond a  
17 reasonable doubt is that the defendant you are considering was  
18 associated with or was employed by the enterprise. I  
19 previously instructed you on this element in connection with  
20 count two. Those instructions apply here as well.

21 The third element the government must prove beyond a  
22 reasonable doubt is that the defendant you are considering  
23 engaged in a pattern of racketeering activity. During the  
24 introduction to the racketeering charges, I instructed you that  
25 a pattern of racketeering activity is a series of criminal acts

CBS3MER6

Jury Charge

1 and requires proof that at least two acts of racketeering  
2 committed within 10 years of one another were committed or  
3 aided and abetted by participants in the enterprise. These  
4 acts of racketeering may not be isolated or disconnected, but  
5 must be related to each other by a common scheme, plan or  
6 motive. The acts of racketeering must also amount to or pose a  
7 threat of continued criminal activity.

8 In determining whether the racketeering acts  
9 constituted a pattern, you may consider whether the acts were  
10 closely related in time, whether the acts shared common victims  
11 or common goals, and whether they shared a similarity of  
12 methods. If the same act were repeated more than once, you may  
13 also consider this as evidence that the acts were part of a  
14 part.

15 In contrast to the racketeering conspiracy charge,  
16 count one requires the government to prove that the defendant  
17 you are considering actually committed or aided and abetted the  
18 commission of two or more of the racketeering acts. While this  
19 distinction may appear to complicate matters, I've structured  
20 this charge to make it more understandable.

21 As I explained earlier, each of the racketeering acts  
22 charged in count one are also charged as substantive counts in  
23 the indictment. Thus, for you to find a particular defendant  
24 has personally committed an act of racketeering, you must have  
25 found that defendant guilty of committing or aiding and

CBS3MER6

Jury Charge

1 abetting the commission of the substantive offense. I will now  
2 detail how that applies to each defendant charged in count one.

3 Joshua Meregildo is charged in the indictment with  
4 committing three acts of racketeering. Racketeering act two  
5 incorporates counts five and six, which charge the conspiracy  
6 to murder Carrel Ogarro, and the murder of Carrel Ogarro on  
7 July 31, 2010. If you found Joshua Meregildo guilty of count  
8 five, count six, or both, then he committed racketeering act  
9 two.

10 Racketeering act four incorporates counts nine and 10,  
11 which charge the conspiracy to murder rival drug distributors  
12 and an assault and attempted murder on September 13, 2010. If  
13 you found Joshua Meregildo guilty of count nine, count 10, or  
14 both, then he committed racketeering act four.

15 Racketeering act six incorporates count 13, which  
16 charges the conspiracy to distribute crack cocaine and  
17 marijuana. If you found Joshua Meregildo guilty of count 13,  
18 then he committed racketeering act six. I instruct you that it  
19 does not matter the drug, or drug weight, that you determined  
20 was proved in connection with count 13.

21 The government has satisfied its burden against Joshua  
22 Meregildo with respect to this element if you find that he  
23 committed two of these racketeering acts.

24 Melvin Colon is charged in the indictment with  
25 committing three acts of racketeering. Racketeering act three

CBS3MER6

Jury Charge

1 incorporates counts seven and eight, which charge the  
2 conspiracy to murder Delquan Alston and the murder of Delquan  
3 Alston on August 27, 2010. If you found Melvin Colon guilty of  
4 count seven, count eight, or both, then he committed  
5 racketeering act three.

6 Racketeering act five incorporates counts 11 and 12,  
7 which charge the conspiracy to murder rival gang members and  
8 the attempted murder of a rival gang member and the assault of  
9 another person on September 8, 2011. If you found Melvin Colon  
10 guilty of count 11, count 12, or both, then he committed  
11 racketeering act five.

12 Racketeering act six incorporates count 13, which  
13 charges the conspiracy to distribute crack cocaine and  
14 marijuana. If you found Melvin Colon guilty of count 13, then  
15 he committed racketeering act six.

16 I instruct you that it does not matter the drug, or  
17 drug weight, that you determine was proved in connection with  
18 count 13.

19 The government has satisfied its burden against Melvin  
20 Colon with respect to this element if you find that he  
21 committed two of these racketeering acts.

22 Now, Earl Pierce is charged in the indictment with  
23 committing three acts of racketeering. Racketeering act one  
24 incorporates counts three and four, which charge the conspiracy  
25 to murder rival narcotics distributors and the murder of Jason

CBS3MER6

Jury Charge

1 Correa on July 25, 2010. If you found Earl Pierce guilty of  
2 count three, count four, or both, then he committed  
3 racketeering act one.

4 Racketeering act four incorporates counts nine and 10,  
5 which charge the conspiracy to murder rival drug distributors,  
6 and an assault and attempted murder on September 13, 2010. If  
7 you found Earl Pierce guilty of count nine, count 10, or both,  
8 then he committed racketeering act four.

9 Racketeering act six incorporates count 13, which  
10 charges the conspiracy to distribute crack cocaine and  
11 marijuana. Thus, if you found Earl Pierce guilty of count 13,  
12 then he committed racketeering act six.

13 I instruct you that it does not matter the drug, or  
14 drug weight, that you determined is proved in connection with  
15 count 13.

16 The government has satisfied its burden against Earl  
17 Pierce with respect to this element if you find that he  
18 committed two of these racketeering acts.

19 The fourth element the government must prove beyond a  
20 reasonable doubt is that the defendant you are considering, in  
21 committing the racketeering acts, participated in or was  
22 conducting the affairs of the enterprise. It's not enough that  
23 there be an enterprise and that the defendant engaged in a  
24 pattern of racketeering activity. There must also be a  
25 meaningful connection between the defendant's racketeering acts

CBS3MER6

Jury Charge

1 and the affairs of the enterprise. The defendant must have  
2 conducted or participated in the enterprise by engaging in the  
3 pattern of racketeering activity.

4 It is not necessary, however, that the racketeering  
5 activity directly furthered the enterprise's activities. It is  
6 enough that the defendant's racketeering activity was related  
7 to the enterprise's activities.

8 This element also requires that the defendant have had  
9 some role in the operation, direction, or management of the  
10 enterprise. The government is not required to prove that the  
11 defendant was the sole operator or manager of the enterprise,  
12 or even that the defendant was a principal operator or manager.  
13 It is sufficient if you find that the defendant provided  
14 substantial assistance to those who conducted the enterprise  
15 and thereby was involved in playing a part in the direction of  
16 the affairs of the enterprise through a pattern of racketeering  
17 activity.

18 The fifth element the government must prove beyond a  
19 reasonable doubt is that the criminal enterprise itself, or the  
20 racketeering activities of those associated with it, had some  
21 effect on interstate or foreign commerce. I previously  
22 instructed you on this element under count two. Those  
23 instructions apply here as well.

24 In addition to all the elements of the offense that I  
25 have just described, you must decide whether any act in

CBS3MER6

Jury Charge

1 furtherance of the crime occurred within the Southern District  
2 of New York, which includes Manhattan, the Bronx, and  
3 Westchester. I should note that on the issue of venue, and  
4 this issue alone, the government need not offer proof beyond a  
5 reasonable doubt but only by a mere preponderance of the  
6 evidence. Thus, the government has satisfied its venue  
7 obligations if you conclude it is more likely than not that the  
8 relevant act occurred in the Southern District of New York. If  
9 you find that the government has failed to prove this venue  
10 requirement by a preponderance of the evidence, then you must  
11 acquit the defendant.

12 Members of the jury, much earlier today in my charge,  
13 in fact way back on page three, I discussed your duties as  
14 jurors and instructed you about what is not evidence. And I am  
15 adding to that instruction. And I previously told you at line  
16 eight that you should bear in mind particularly that a question  
17 put to a witness or a comment made to a witness is never  
18 evidence. It is only the answer in the context of the question  
19 that is evidence. And I told you then you may not consider any  
20 answer that I directed you to disregard.

21 And ladies and gentlemen of the jury, nor any answer  
22 given to a question for which I sustained an objection. And we  
23 will be making that change in the printed copy of your charge.  
24 And the same holds true on page six, at line six, where I told  
25 you, similarly, you are to disregard any testimony that I have

CBS3MER6

Jury Charge

1 stricken, or an answer given to a question for which I have  
2 sustained an objection. That change will also be incorporated  
3 in your written copy.

4 Now, we're coming to some of my concluding charges to  
5 you. Your verdict must be based solely on the evidence or the  
6 lack of evidence. I'm at page 135.

7 It would be improper for you to consider any personal  
8 feelings you may have about a defendant's race, religion,  
9 national origin, sex, or age. Similarly, it would be improper  
10 for you to consider any personal feelings you may have about  
11 the race, religion, national origin, sex, or age of any witness  
12 or anyone else involved in this case. It would be equally  
13 improper for you to allow any feelings you might have about the  
14 nature of the crimes charged to interfere with your  
15 decision-making process. The defendants and the government are  
16 entitled to a trial free from prejudice, and our judicial  
17 system cannot work unless you reach your verdict through a fair  
18 and impartial consideration of the evidence.

19 The question of possible punishment of the defendant  
20 is of no concern to the jury and should not in any sense enter  
21 into or influence your deliberations. The duty of imposing  
22 sentence rests exclusively on the Court. Your function is to  
23 weigh the evidence in the case and to determine whether or not  
24 a defendant is guilty beyond a reasonable doubt, solely on the  
25 basis of such evidence. Under your oath as jurors, you cannot

CBS3MER6

## Jury Charge

1 allow a consideration of the punishment that may be imposed on  
2 a defendant if convicted to influence your verdict in any way,  
3 or in any sense enter into your deliberations.

4 I remind you that the indictment is not evidence. It  
5 merely describes the charges against the defendants and is the  
6 way the government brings them into court. It is an  
7 accusation. Nothing more. It may not be considered by you as  
8 any evidence of the guilt of the defendants.

9 In reaching your determination of whether the  
10 government has proven a defendant guilty beyond a reasonable  
11 doubt, you may consider only the evidence introduced at trial,  
12 or the lack of evidence.

13 During the course of the trial, you heard references  
14 to some of the defendants by nicknames or a/k/a's. There is  
15 nothing improper or unlawful about having a nickname or an  
16 a/k/a. There is no allegation in this case that the nicknames  
17 or a/k/a's of any defendant has anything to do with the  
18 allegations against them. You're not to consider a nickname or  
19 an a/k/a as evidence of any wrongdoing. This evidence was only  
20 admitted for the limited purpose of identifying a defendant,  
21 and so you may only consider it for that purpose.

22 Now, the government offered evidence tending to show  
23 that on different occasions a defendant engaged in conduct  
24 similar or related to conduct charged in the indictment. Let  
25 me remind you that the defendants are not on trial for

CBS3MER6

Jury Charge

1 committing acts that are not charged in the indictment.

2 Accordingly, you may not consider this evidence of other acts  
3 as a substitute for proof that the defendant you are  
4 considering committed the acts charged in the indictment. Nor  
5 may you consider this evidence as proof that a defendant is  
6 inclined to commit crime or has a bad character. The evidence  
7 of other uncharged acts was admitted for a much more limited  
8 purpose, as I previously instructed you, and you may consider  
9 it only for that limited purpose.

10 If you determine that the defendant you are  
11 considering committed the acts charged in the indictment and  
12 the other uncharged acts as well, then you may, but you need  
13 not, draw an inference that those uncharged acts are evidence  
14 of the background to or development of the charged crimes, as  
15 well as the relationship of trust among co-conspirators.  
16 Evidence of these uncharged acts may not be considered by you  
17 for any other purpose. Specifically, you may not use this  
18 evidence to conclude that because a defendant committed the  
19 other uncharged acts, that he must have also committed the acts  
20 charged in the indictment.

21 Now, it is the duty of the attorney for each side of a  
22 case to object when the other side offers testimony or other  
23 evidence that the attorney believes is not properly admissible.  
24 Counsel also have the right and duty to ask the Court to make  
25 rulings of law and to request conferences at the side bar out

CBS3MER6

## Jury Charge

1 of the hearing of the jury. You should not harbor any  
2 prejudice against any attorney or party because the attorney  
3 objected to the admissibility of evidence or asked for a  
4 conference out of the hearing of the jury, or asked me for a  
5 ruling on the law.

6 Under your oath as jurors, you are not to be swayed by  
7 fear, prejudice, bias, or sympathy. You're to be guided solely  
8 by the evidence in this case, and the crucial question that you  
9 must ask yourselves as you sift through the evidence is has the  
10 government proven the guilt of the defendant beyond a  
11 reasonable doubt?

12 It is for you, and you alone, to decide whether the  
13 government has proven that the defendant you are considering is  
14 guilty of the crime charged solely on the basis of the evidence  
15 or lack of evidence and subject to the law as I've instructed  
16 you.

17 It must be clear to you that once you let fear or  
18 prejudice or bias or sympathy interfere with your thinking,  
19 there is a risk that you will not arrive at a true and just  
20 verdict.

21 If you have a reasonable doubt as to the defendant's  
22 guilt, you should not hesitate to render a verdict of not  
23 guilty. On the other hand, if you should find that the  
24 government has met its burden of proving a defendant's guilt  
25 beyond a reasonable doubt, you should not hesitate because of

CBS3MER6

Jury Charge

1 sympathy or any other reason to render a verdict of guilty.

2 Now, members of the jury, I told you that we would  
3 provide you with a jury verdict sheet to aid in your  
4 deliberations. I'm going to ask my deputy to distribute copies  
5 of this verdict sheet to you at this time. And we will review  
6 it together.

7 First, when you take an initial look at the first page  
8 of this jury verdict sheet, you may be somewhat confused  
9 because it starts with the first question is numbered three.  
10 I'll take the credit or blame for that, because the way in  
11 which we've organized my instructions to you, has turned some  
12 of the counts in the indictment to the end as you just  
13 observed. We discussed count one of the indictment last in the  
14 charges. And count two of the indictment was next to last in  
15 the charges. And that's because it's much more logical to do  
16 it the way I propose to do it. And because I'm the judge, I  
17 get my way. One way or the other, the parties wind up agreeing  
18 with me.

19 So, the only reason that it starts with number three  
20 is as an aid to you. That's talking about count three. So  
21 each question here relates to the same numbered count, because  
22 otherwise, we would be starting with question one that related  
23 to count three, and things would become even more confusing.  
24 And my job as the judge is to try to dispel confusion and try,  
25 as best we can, to make think simple and comprehensible for

CBS3MER6

Jury Charge

1 you. So, don't think that that's a typo. It's very deliberate  
2 in the verdict sheet.

3 So let's begin. The jury unanimously decides on the  
4 following verdict with respect to each count in the indictment  
5 and as to each defendant.

6 Count three. Conspiracy to murder members of the  
7 Melrose Organization in aid of racketeering as charged against  
8 Earl Pierce.

9 Question three. How do you find the defendant Earl  
10 Pierce with respect to count three? Not guilty or guilty.  
11 You'll check the line.

12 Count four. Murder of Jason Correa in aid of  
13 racketeering as charged against Earl Pierce.

14 Question four. How do you find the defendant Earl  
15 Pierce with respect to count four? Not guilty or guilty.

16 Count five. Conspiracy to murder Carrel Ogarro in aid  
17 of racketeering as charged against Joshua Meregildo.

18 Question five. How do you find the defendant Joshua  
19 Meregildo with respect to count five? Not guilty or guilty.

20 Count six. Murder of Carrel Ogarro in aid of  
21 racketeering as charged against Joshua Meregildo.

22 Question six. How do you find the defendant Joshua  
23 Meregildo with respect to count six? Not guilty or guilty.

24 (Continued on next page)

Cbs1mer7

1                   THE COURT: Count Seven: Conspiracy to murder Delquan  
2 Alston in aid of racketeering as charged against Melvin Colon.

3                   Question 7. How do you find the defendant Melvin  
4 Colon with respect to Count Seven? Not guilty or guilty.

5                   Count Eight: Murder of Delquan Alston in aid of  
6 racketeering as charged against Melvin Colon.

7                   Question 8. How do you find the defendant Melvin  
8 Colon with respect to Count Seven -- excuse me -- with respect  
9 to Count Eight? Typo there. That is a typo. Count Eight.  
10 Not guilty or guilty.

11                  Count Nine: Conspiracy to murder members of the 321  
12 organization in aid of racketeering as charged against Joshua  
13 Meregildo and Earl Pierce.

14                  Question 9. How do you find the defendants Joshua  
15 Meregildo and Earl Pierce with respect to Count Nine? And then  
16 their names, not guilty or guilty, individual determinations on  
17 each defendant, with respect to each crime charged against  
18 them.

19                  Count Ten: Assault and attempted murder of Tarean  
20 Joseph in aid of racketeering as charged against Joshua  
21 Meregildo and Earl Pierce.

22                  Question No. 10. How do you find the defendants  
23 Joshua Meregildo and Earl Pierce with respect to Count Ten?  
24 Separate determinations for each of them.

25                  Now an instruction. If you find the defendant you are

Cbs1mer7

1 considering guilty on Count Ten, then please answer Questions  
2 No. 10.1 and 10.2 for that defendant. If you find the  
3 defendant you are considering not guilty on Count Ten, please  
4 skip Questions 10.1 and 10.2 for that defendant.

5 So Question 10.1. Did the government prove beyond a  
6 reasonable doubt that the defendant you are considering  
7 assaulted Tarean Joseph? Separate determinations, no or yes,  
8 for each of the two defendants.

9 Question 10.2. Did the government prove beyond a  
10 reasonable doubt that the defendant you are considering  
11 attempted to murder Tarean Joseph? Once again, no or yes.

12 Count Eleven: Conspiracy to murder members of the  
13 Maria Lopez crew in aid of racketeering as charged against  
14 Melvin Colon.

15 Question 11. How do you find the defendant Melvin  
16 Colon with respect to Count 11? Not guilty or guilty.

17 Count Twelve: Assault and attempted murder of Jing  
18 Bao Jiang in aid of racketeering as charged against Melvin  
19 Colon.

20 Question 12. How do you find the defendant Melvin  
21 Colon with respect to Count Twelve? Not guilty or guilty.

22 Now an instruction. If you find the defendant Melvin  
23 Colon guilty on Count Twelve, please answer Questions 12.1 and  
24 12.2. If you find the defendant Melvin Colon not guilty on  
25 Count Twelve, please skip Questions 12.1 and 12.2.

Cbs1mer7

1                   Question 12.1. Did the government prove beyond a  
2 reasonable doubt that the defendant Melvin Colon assaulted Jing  
3 Bao Jiang? No or yes.

4                   Question 12.2. Did the government prove beyond a  
5 reasonable doubt that the defendant Melvin Colon attempted to  
6 murder Jing Bao Jiang? No or yes.

7                   Count Thirteen: Narcotics conspiracy as charged  
8 against Joshua Meregildo, Melvin Colon, Earl Pierce, and  
9 Nolbert Miranda.

10                  Question 13. How do you find each defendant with  
11 respect to Count Thirteen? And then each defendant is listed,  
12 and you'll make a separate determination on each defendant.

13                  And then there's an instruction. If you find the  
14 defendant you are considering guilty on Count Thirteen, then  
15 please answer Questions No. 13.1, 13.2 for that defendant. If  
16 you find the defendant you are considering not guilty on Count  
17 Thirteen, please skip Questions No. 13.1 and 13.2 for that  
18 defendant.

19                  Question 13.1. Did the defendant you found guilty of  
20 Count Thirteen either have personal involvement with or was it  
21 reasonably foreseeable to him that the narcotics conspiracy  
22 involved marijuana? You'll answer that question no or yes.

23                  Question 13.2. Did the defendant who you found guilty  
24 of Count Thirteen either have personal involvement with or was  
25 it reasonably foreseeable to him that the narcotics conspiracy

Cbs1mer7

1 involved crack cocaine? You'll answer that no or yes.

2 Another instruction. For each defendant that you find  
3 guilty of Count Thirteen and answered yes to Question 13.2,  
4 check one box on Question 13.3. If you answered no to  
5 Question 13.2 for the defendant you are considering, please  
6 skip Question No. 13.3 for that defendant.

7 So, 13.3. What amount of crack cocaine did the  
8 defendant you are considering either have personal involvement  
9 with or was reasonably foreseeable to him was involved in the  
10 narcotics conspiracy? And there are three columns: 280 grams  
11 or more, 28 grams or more but less than 280 grams, or less than  
12 28 grams. Check only one of those boxes for a defendant. And  
13 remember, you must be unanimous on that determination.

14 Count Fourteen: Murder of Jason Correa in connection  
15 with a drug crime as charged against Earl Pierce.

16 There's an instruction. Consider Count Fourteen only  
17 if you find the defendant Earl Pierce guilty of the narcotics  
18 conspiracy as charged in Count Thirteen and you find that the  
19 conspiracy involved 280 grams or more of crack cocaine. If you  
20 find the defendant Earl Pierce not guilty of Count Thirteen or  
21 that the conspiracy involved less than 280 grams of crack  
22 cocaine, do not consider Count Fourteen and skip Question No.  
23 14.

24 Question 14. How do you find the defendant Earl  
25 Pierce with respect to Count Fourteen? Not guilty or guilty.

Cbs1mer7

1                   Count Fifteen: Murder of Carrel Ogarro in connection  
2 with a drug crime as charged against Joshua Meregildo.

3                   Consider Count Fifteen only if you find the defendant  
4 Joshua Meregildo guilty of the narcotics conspiracy as charged  
5 in Count Thirteen and you find that the conspiracy involved  
6 280 grams or more of crack cocaine. If you find the defendant  
7 Joshua Meregildo not guilty of Count Thirteen or that the  
8 conspiracy involved less than 280 grams of crack cocaine, do  
9 not consider Count Fifteen and skip Question No. 15.

10                  Question 15. How do you find the defendant Joshua  
11 Meregildo with respect to Count Fifteen? Not guilty or guilty.

12                  Count Sixteen: Murder of Delquan Alston in connection  
13 with a drug crime as charged against Melvin Colon.

14                  Consider Count Sixteen only if you find the defendant  
15 Melvin Colon guilty of the narcotics conspiracy as charged in  
16 Count Thirteen and you find that the conspiracy involved  
17 280 grams or more of crack cocaine. If you find the defendant  
18 Melvin Colon not guilty of Count Thirteen or that the  
19 conspiracy involved less than 280 grams of crack cocaine, do  
20 not consider Count Sixteen and skip Question No. 16.

21                  Question 16. How do you find the defendant Melvin  
22 Colon with respect to Count Sixteen? Not guilty or guilty.

23                  Count Seventeen: Firearm possession or use during or  
24 in furtherance of the murder of Jason Correa as charged against  
25 Earl Pierce.

Cbs1mer7

1           Then an instruction. Consider Count Seventeen only if  
2 you find the defendant Earl Pierce guilty of the murder of  
3 Jason Correa in aid of racketeering as charged in Count Four.  
4 If you find the defendant Earl Pierce not guilty of Count Four,  
5 do not consider Count Seventeen and skip Question No. 17.

6           Question 17. How do you find the defendant Earl  
7 Pierce with respect to Count Seventeen? Not guilty or guilty.

8           Count Eighteen: Firearm possession or use during or  
9 in furtherance of the murder of Carrel Ogarro as charged  
10 against Joshua Meregildo.

11           Consider Count Eighteen only if you find the defendant  
12 Joshua Meregildo guilty of the murder of Carrel Ogarro in aid  
13 of racketeering as charged in Count Six. If you find the  
14 defendant Joshua Meregildo not guilty of Count Six, do not  
15 consider Count Eighteen and skip Question 18.

16           Question 18. How do you find the defendant Joshua  
17 Meregildo with respect to Count Eighteen? Not guilty or  
18 guilty.

19           Count Nineteen: Firearm possession or use during or  
20 in furtherance of the murder of Delquan Alston as charged  
21 against Melvin Colon.

22           Consider Count Nineteen only if you find the defendant  
23 Melvin Colon guilty of the murder of Delquan Alston in aid of  
24 racketeering as charged in Count Eight. If you find the  
25 defendant Melvin Colon not guilty of Count Eight, do not

Cbs1mer7

1 consider Count Nineteen and skip Question No. 19.

2 Question 19. How do you find the defendant Melvin  
3 Colon with respect to Count Nineteen? Not guilty or guilty.

4 Count Twenty: Firearms possession or use during or in  
5 furtherance of the assault and attempted murder of Tarean  
6 Joseph as charged against Joshua Meregildo and Earl Pierce.

7 Consider Count Twenty against the defendant you are  
8 considering only if you find that defendant guilty of the  
9 assault and attempted murder of Tarean Joseph in aid of  
10 racketeering as charged in Count Ten. If you find the  
11 defendant you are considering not guilty of Count Ten, do not  
12 consider Count Twenty against that defendant and skip Questions  
13 20, 20.1, and 20.2 for that defendant.

14 Question 20. How do you find the defendant you are  
15 considering with respect to Count Twenty? Not guilty or  
16 guilty.

17 If you find the defendant you're considering guilty on  
18 Count Twenty, then please consider Questions Nos. 20.1 and 20.2  
19 for that defendant.

20 If you find -- and I can see that this instruction is  
21 just repeating what was right up above, so when we correct  
22 this, we'll just strike the first set of instructions on it.  
23 If you find the defendant you're considering not guilty on  
24 Count Twenty, please skip Questions 20.1 and 20.2 for that  
25 defendant.

Cbs1mer7

1                   Question 20.1. Did the government prove beyond a  
2 reasonable doubt that a firearm was brandished? You'll answer  
3 that no or yes.

4                   Question 20.2. Did the government prove beyond a  
5 reasonable doubt that a firearm was discharged? Answer that  
6 question no or yes.

7                   Count Twenty-one: Firearm possession or use during or  
8 in furtherance of the conspiracy to murder members of the Maria  
9 Lopez crew as charged against Melvin Colon.

10                  Consider Count Twenty-one only if you find the  
11 defendant Melvin Colon guilty of the assault and attempted  
12 murder of Jing Bao Jiang in aid of racketeering as charged in  
13 Count Eleven. I see, by the way, Mr. Jiang's name is  
14 misspelled there, so we'll correct that. If you find the  
15 defendant Melvin Colon not guilty of Count Eleven, do not  
16 consider Count Twenty-one and skip Question Nos. 21, 21.1, and  
17 21.2 for that defendant.

18                  Question 21. How do you find the defendant Melvin  
19 Colon with respect to Count Twenty-one? Not guilty or guilty.

20                  If you find the defendant Melvin Colon guilty on Count  
21 Twenty-one, then please answer Questions Nos. 21.1 and 21.2.  
22 If you find the defendant Melvin Colon not guilty on Count  
23 Twenty-one, please skip Questions 21.1 and 21.2.

24                  21.1. Did the government prove beyond a reasonable  
25 doubt that a firearm was brandished? No or yes.

Cbs1mer7

1                   21.2. Did the government prove beyond a reasonable  
2 doubt that a firearm was discharged? No or yes.

3                   Count Twenty-two: Firearm possession or use during or  
4 in furtherance of a narcotics conspiracy as charged against  
5 Joshua Meregildo, Melvin Colon, Earl Pierce, and Nolbert  
6 Miranda. Consider Count Twenty-two only if you find the  
7 defendant you are considering guilty of the narcotics  
8 conspiracy as charged in Count Thirteen. If you find the  
9 defendant you are considering not guilty of Count Thirteen, do  
10 not consider Count Twenty-two and skip Question No. 22 for that  
11 defendant.

12                  Question 22. How do you find each defendant with  
13 respect to Count Twenty-two? Not guilty or guilty.

14                  And now Count Two: Racketeering conspiracy as charged  
15 against Joshua Meregildo, Melvin Colon, Earl Pierce, and  
16 Nolbert Miranda.

17                  Question 2. How do you find each defendant with  
18 respect to Count Two? Not guilty or guilty.

19                  Finally, Count One: Racketeering enterprise as  
20 charged against Joshua Meregildo, Melvin Colon, and Earl  
21 Pierce.

22                  Racketeering acts as charged against Joshua Meregildo:

23                  Question 1.1. Racketeering Act Two: Did you find  
24 Joshua Meregildo guilty of Count Five, Count Six, or both? No  
25 or yes.

Cbs1mer7

1 Racketeering Act Four.

2 1.2. Racketeering Act Four: Did you find Joshua  
3 Meregildo guilty of Count Nine, Count Ten, or both? No or yes.

4 Question 1.3. Racketeering Act Six: Did you find  
5 Joshua Meregildo guilty of Count Thirteen? No or yes.

6 Consider Count One against the defendant Joshua  
7 Meregildo only if you answered yes to two or more of  
8 Questions 1.1, 1.2, or 1.3. If you answered no to two or more  
9 of Questions 1.1, 1.2, or 1.3, do not consider Count One  
10 against the defendant Joshua Meregildo and skip Question No. 1  
11 for him.

12 Racketeering acts as charged against Melvin Colon:

13 1.4. Racketeering Act Three: Did you find Melvin  
14 Colon guilty of Count Seven, Count Eight, or both? No or yes.

15 Question 1.5. Racketeering Act Five: Did you find  
16 Melvin Colon guilty of Count Eleven, Count Twelve, or both? No  
17 or yes.

18 Question 1.6. Racketeering Act Six: Did you find  
19 Melvin Colon guilty of Count Thirteen? No or yes.

20 Consider Count One against the defendant Melvin Colon  
21 only if you answered yes to two or more of Questions 1.4, 1.5,  
22 or 1.6. If you answered no to two or more of Questions 1.4,  
23 1.5, or 1.6, do not consider Count One against the defendant  
24 Melvin Colon and skip Question No. 1 for him.

25 Racketeering acts as charged against Earl Pierce:

Cbs1mer7

1                   1.7. Racketeering Act One: Did you find Earl Pierce  
2 guilty of Count Three, Count Four, or both? No or yes.

3                   Question 1.8. Racketeering Act Four: Did you find  
4 Earl Pierce guilty of Count Nine, Count Ten, or both? No or  
5 yes.

6                   Question 1.9. Racketeering Act Six: Did you find  
7 Earl Pierce guilty of Count Thirteen? No or yes.

8                   Consider Count One against the defendant Earl Pierce  
9 only if you answered yes to two or more of Questions 1.7, 1.8,  
10 or 1.9. If you answered no to two or more of Questions 1.7,  
11 1.8, or 1.9, do not consider Count One against the defendant  
12 Earl Pierce and skip Question No. 1 for him.

13                  Question 1. How do you find each defendant with  
14 respect to Count One? Not guilty or guilty.

15                  And then there is a place for your foreperson to fill  
16 in the date and sign his or her name.

17                  Now it's always good to read these verdict sheets.  
18 Inevitably there's a typo or two. We'll take care of that when  
19 we send them into the jury room. So you can just leave these  
20 verdict sheets on your chairs with your binders.

21                  Now shortly you're going to go into the jury room and  
22 begin your deliberations. If during those deliberations you  
23 want to see any of the exhibits, they will be sent to you in  
24 the jury room on request. A list of the exhibits received in  
25 evidence will be forwarded to you in the jury room. If you

Cbs1mer7

1 want any of the testimony read, that can also be done and will  
2 occur here in open court. But please remember that it's not  
3 always easy to locate what you might want so be as specific as  
4 you possibly can in requesting exhibits or portions of  
5 testimony that you may want.

6 Your requests for exhibits or testimony -- in fact any  
7 communication with the court -- should be made in writing,  
8 signed by your foreperson, and given to one of the marshals. I  
9 will respond to any questions or requests you have as promptly  
10 as possible by having you return to the courtroom so that I can  
11 speak to you in person.

12 Now the most important part of this case is the part  
13 that you, as jurors, are about to play as you deliberate on the  
14 issues of fact. It's for you and you alone to decide whether  
15 the government has proved beyond a reasonable doubt each of the  
16 essential elements of the crime with which the defendant you  
17 are considering is charged. If the government has succeeded,  
18 your verdict should be guilty. If it has failed, it should be  
19 not guilty. In your oath, you promised that you would well and  
20 truly try the issues joined in this case and a true verdict  
21 render. Your function is to weigh the evidence in the case and  
22 determine whether or not the defendant you are considering has  
23 been proven guilty beyond a reasonable doubt solely on the  
24 basis of the evidence.

25 As you deliberate, please listen to the opinions of

Cbs1mer7

1 your fellow jurors and ask for an opportunity to express your  
2 own views. All of you must be present together to hear one  
3 another when you deliberate. If one or more of you are not  
4 present, or you excuse yourself to use the restroom, all  
5 deliberations should cease until you're all together again  
6 around the jury table. Every juror should be heard. No one  
7 juror should control or monopolize the deliberations. Each of  
8 you must decide this case for yourself after consideration with  
9 your fellow jurors. If after listening to your fellow jurors  
10 you become convinced that your view is wrong, do not hesitate  
11 to change your view. On the other hand, do not surrender your  
12 honest convictions and beliefs solely because of the opinions  
13 of your fellow jurors or because you are outnumbered. Your  
14 final vote must reflect your conscientious belief as to how the  
15 issues should be decided.

16 Your verdict must be unanimous. If at any time you  
17 are not in agreement, you are instructed that you are not to  
18 reveal the standing of the jurors, that is, the split of the  
19 vote, to anyone, including the court, at any time during your  
20 deliberations. Finally, I say this not because I think it's  
21 necessary but because it's the custom in this courthouse to say  
22 this. You should treat each other with courtesy and respect in  
23 your deliberations.

24 Your first task as a jury will be to choose your  
25 foreperson. The foreperson has no greater voice or authority

Cbs1mer7

1 than any other juror but is the person who will communicate  
2 with the court when questions arise.

3 Your duty is to decide the issues fairly and  
4 impartially and to see that justice is done. Remember at all  
5 times, you are not partisans. You are judges -- judges of the  
6 facts. Your sole interests are to seek the truth from the  
7 evidence in the case and determine whether the government has  
8 proved or failed to prove beyond a reasonable doubt that the  
9 defendant you are considering in this case committed the crime  
10 alleged against him in the indictment.

11 Now, members of the jury, I ask your patience for a  
12 few moments longer. It's necessary for me to confer with  
13 counsel and the reporter at the sidebar. I'll ask you to  
14 remain patiently in the jury box without speaking to each other  
15 and we will return in a few moments.

16 Would counsel come up to the sidebar.

17 (At the sidebar)

18 THE COURT: All right. Are there any exceptions or  
19 additional requests to charge?

20 MS. HELLER: We just noticed two small typographical  
21 errors.

22 THE COURT: Go ahead.

23 MS. HELLER: Page 124, line 3, specifically, Count Two  
24 it reads. It should say One. You actually read it --

25 THE COURT: I read it as One. We're changing that.

Cbs1mer7

1 MS. HELLER: And then the other one was page 128, line  
2 14. "You may also consider this as evidence that the acts were  
3 a part of a --" "pattern," I believe it should say.

4 THE COURT: Right. We'll change that.

5 MS. HELLER: The only other thing is that you noticed  
6 one instance of "Jiang" being spelled wrong. There is a second  
7 one, on page 4.

8 THE COURT: All right. I will say that my observation  
9 that there was a duplication of an instruction, on reflection,  
10 I realized when I saw that it's not a duplication and it should  
11 remain there.

12 MS. HELLER: We agree.

13 MR. BECKER: Your Honor --

14 THE COURT: Go ahead.

15 MR. BECKER: I'm sorry.

16 THE COURT: Let me just take them in indictment order.

17 MR. LEE: Your Honor, no additional requests. I just  
18 want to note for the record, of course, I previously did state  
19 my objections to your Honor's instructions, co-defendants also  
20 stated their objections, which I joined, and your Honor ruled,  
21 but at this time I respectfully renew my objections to the --  
22 which I previously stated as to the instructions.

23 Nothing further, your Honor.

24 THE COURT: All right. Thank you, Mr. Lee.

25 Mr. Dinnerstein?

Cbs1mer7

1                   MR. DINNERSTEIN: Your Honor, also, I objected to the  
2 *Pinkerton* charge, and I just would like that on the record, but  
3 nothing else.

4                   THE COURT: All right.

5                   MR. MIEDEL: Your Honor, I also renew all the previous  
6 objections and the reasons that I stated for those. In terms  
7 of the verdict sheet, I almost hesitate to raise this, but on  
8 Count Fourteen --

9                   THE COURT: Hold on. Let me get it.

10                  MR. MIEDEL: The previous objection that I raised  
11 which was on the previous page, which you corrected on 13.3, in  
12 the instructions to Count Fourteen, Fifteen, and Sixteen, it  
13 has the same language, which is, "If you find the defendant  
14 Earl Pierce not guilty of Count Thirteen or that the conspiracy  
15 involved less than 280 grams," I think that is if -- I assume  
16 what that means is if you check the box or something like that  
17 on the previous page, but it's the same objection, which is not  
18 the conspiracy as a whole involved 280 grams or more but as to  
19 Earl Pierce. But I didn't see it until --

20                  MR. FEE: I don't understand.

21                  MR. MIEDEL: I'm not being clear.

22                  THE COURT: Please state it again.

23                  MR. MIEDEL: Sorry. On 13.3, on the previous page,  
24 you changed the language which had previously been "the  
25 conspiracy involved," you changed that to "you are considering

Cbs1mer7

1 either to have personal involvement with or was reasonably  
2 foreseeable."

3 THE COURT: Okay.

4 MR. MIEDEL: The language on the following  
5 instructions is also "the conspiracy involved," and that's the  
6 question -- that's the issue.

7 THE COURT: I got it. And I'm going to change it, all  
8 right? But I don't think I need to draw it to their attention.

9 MR. MIEDEL: No, no, I don't think so.

10 THE COURT: Let me just change it before we send it  
11 in.

12 All right. Anything further?

13 MR. MIEDEL: No, your Honor.

14 THE COURT: All right.

15 MR. BECKER: Your Honor, may it please the court, with  
16 respect to the verdict sheet -- and the change I'm going to  
17 suggest, I also don't think necessarily need be told to the  
18 jury, but I think it should be changed.

19 The bottom of page 4, where you tell the jury that if  
20 you -- and this is with respect to the drug conspiracy count.  
21 "If you find the defendant you are considering not guilty on  
22 Count Thirteen, please skip Questions No. 13.1 and 13.2 for  
23 that defendant." Respectfully, it should say and 13.3,  
24 because --

25 (Pause)

Cbs1mer7

1                   MR. BECKER: I couldn't help but overhear what  
2 Mr. Gosnell just said, and I considered that before lodging my  
3 objection.

4                   THE COURT: I'll put it in, okay?

5                   MR. BECKER: For clarity's sake.

6                   THE COURT: It's like earflaps; right?

7                   MR. BECKER: Your Honor, in addition, I guess I also  
8 previously made a number of objections and provided -- to your  
9 Honor's charge and provided the bases therefor pursuant to  
10 Rule -- I think it's 30 of the Federal Rules of Criminal  
11 Procedure, and I restate and reassert them here.

12                  Your Honor, other than that, I have nothing else.

13                  However, there is one other potential issue that I  
14 want to bring to the court's attention. It involves the other  
15 defendants and I have not mentioned it to other counsel. I  
16 don't want to raise it without -- if the court could give us 60  
17 seconds, I can -- we can stand right over there and then report  
18 back.

19                  THE COURT: That's fine.

20                  MR. BECKER: Thank you.

21                  THE COURT: We'll wait for you.

22                  (Defense counsel conferring)

23                  MR. MIEDEL: Your Honor, Mr. Becker has located an  
24 issue in the jury charge that is a potential serious problem on  
25 one of the instructions, and even though it doesn't affect his

Cbs1mer7

1 client, I ask that he be allowed to make the argument for us  
2 because he has thought about it the most.

3 MR. BECKER: Your Honor, it concerns Count One, and it  
4 starts at page 129, the last sentence. And that last sentence  
5 which says, "The government has satisfied its burden against  
6 Joshua Meregildo with respect to this element if you find he  
7 committed two of these racketeering acts." It is repeated on  
8 the following pages with respect to the other two.

9 THE COURT: Fine.

10 MR. BECKER: The problem is this, your Honor: The law  
11 is clear and your Honor's instructions make clear that a  
12 pattern -- to find a pattern of racketeering, the jury must  
13 find more than the commission of two predicate acts. Two  
14 predicate acts are required but clearly not sufficient. That's  
15 black letter law, and the court has indicated earlier about  
16 relatedness and continuity. This jury charge is titled  
17 Engagement in a Pattern of Racketeering against Joshua  
18 Meregildo, and the same for every -- you were in effect  
19 instructing the jury as a matter of law that if they find the  
20 defendant in question committed two acts, he committed a  
21 pattern of racketeering, and that's a jury determination to  
22 make; that's not a legal instruction to give them. I think it  
23 would be clear error.

24 And so I think the simple solution would be to say  
25 that it satisfies the burden if you find he committed at least

Cbs1mer7

1 two of these acts and you further find, as I previously  
2 instructed you -- and we could go back and pick up the exact  
3 language -- that they were related, the continuity, whatever  
4 the phrase was, but to omit that, I submit, would be very  
5 prejudicial, certainly to the defendants charged in Count One  
6 in particular, but potentially also with respect to Mr. Miranda  
7 on Count Two, because when they consider the conspiracy  
8 elements, this could factor into their thinking in a way that  
9 is prejudicial to Mr. Miranda.

10 MR. FEE: Your Honor, we agree with Mr. Becker. I  
11 think it could be accomplished by referring to your earlier  
12 instructions. I don't know if you can restate just for  
13 convenience sake. I'm just --

14 MR. BECKER: I'm heartened that the government agrees.  
15 I think that the -- and the best way to do it would be not  
16 to -- would be to very briefly refer to that by saying -- and  
17 collectively -- finding the language in a minute or so -- by  
18 referring to the relatedness and continuity.

19 MR. FEE: Or just pattern. What you need to do to  
20 find a pattern of racketeering, because I believe that's where  
21 the relatedness instruction is located, but of course the court  
22 can decide.

23 MR. BECKER: Your Honor, page 128 does provide some  
24 discussion.

25 THE COURT: All right. Let's put it in. What do you

Cbs1mer7

1 want --

2                   MR. BECKER: Yes, your Honor just a suggestion for the  
3 court's consideration, and this is from page 128, and I guess  
4 it's the second paragraph, where you tell the jury that there  
5 must be proof that at least two acts of racketeering committed  
6 within ten years of each other -- of one another were committed  
7 and aided or abetted and they may not be isolated or  
8 disconnected but must be related to each other by a common  
9 scheme, plan, or motive, and they must also amount to or  
10 propose a threat of continued criminal activity. Some summary  
11 of that sentiment.

12                   THE COURT: I'm working on it right now.

13                   MR. BECKER: Thank you, your Honor.

14                   THE COURT: All right. How about --

15                   MR. DINNERSTEIN: Your Honor, I have to bring  
16 something up as an officer of the court. Count Twenty-one of  
17 the verdict sheet, there's actually an error in Count  
18 Twenty-one of the verdict sheet.

19                   THE COURT: Okay. Can we just --

20                   MR. DINNERSTEIN: Let's finish this first?

21                   THE COURT: All right.

22                   MR. BECKER: Mr. Miedel has something. Oh, I'm sorry.

23                   THE COURT: "The government has satisfied its burden  
24 against Joshua Meregildo with respect to this element if you  
25 find that he committed two of these racketeering acts and that

Cbs1mer7

1 the acts were related in time, shared common victims or goals,  
2 and a similarity of methods."

3 MR. BECKER: Your Honor, I would respectfully request  
4 that you insert that "they constituted a pattern of  
5 racketeering activity as I have previously instructed you."

6 THE COURT: That may be the easiest way.

7 MR. BECKER: Perhaps, yes.

8 MR. FEE: Your Honor, I think we would strongly prefer  
9 that, instead of. To mix the pattern with the acts --

10 THE COURT: Committed two of these racketeering acts.

11 MR. BECKER: And that those acts -- how about that?

12 THE COURT: "And that those acts constituted a pattern  
13 of racketeering activity as I previously defined"?

14 MR. BECKER: Yes, I think that's good.

15 THE COURT: Is that acceptable?

16 MR. BECKER: Yes.

17 MR. FEE: I think were part of the racketeering,  
18 because the two acts themselves don't have to be the entire  
19 pattern, but --

20 MR. BECKER: Well --

21 MR. FEE: The two acts must be a part of the pattern;  
22 they don't have to be the pattern.

23 MR. BECKER: Is that true?

24 MR. ARAVIND: Yes, and that's page 72.

25 (In open court)

Cbs1mer7

1                   THE COURT: Let's take a break for three minutes,  
2 members of the jury. You know the way to the jury room.

3                   (Jury excused)

4                   THE COURT: We can return to counsel tables.

5                   (In open court; jury not present)

6                   THE COURT: All right. On the issue we were just  
7 discussing at bottom of page 129, line 18, let me propose this:  
8 "The government has satisfied its burden against Joshua  
9 Meregildo with respect to this element if you find that he  
10 committed two of these racketeering acts and that those acts  
11 were part of a pattern of racketeering activity as I have  
12 previously defined that term." Is that acceptable to the  
13 government?

14                  MR. FEE: Absolutely, your Honor.

15                  THE COURT: Is that acceptable to --

16                  MR. BECKER: Your Honor, I'm just looking back, if the  
17 court could indulge me for a few seconds, on whether or not it  
18 is sufficient to say that or whether or not those two acts had  
19 to constitute a pattern of racketeering. I'm not saying the  
20 government's wrong by saying only if they only may be a part  
21 of, but I just want to check if there's something in the  
22 court's other instructions that sheds some light on that  
23 question.

24                  MR. MIEDEL: And your Honor, obviously this applies  
25 also to page 130 and part of 131.

Cbs1mer7

1                   THE COURT: Right. We're just using the one we've  
2 been discussing at the sidebar, but obviously it applies to all  
3 three defendants charged in Count One.

4                   MR. BECKER: Your Honor, at this time I have no basis  
5 to say that the government's wrong, so I'm not. In other  
6 words, I think as the court has proposed -- there's no  
7 objection as the court has proposed it.

8                   THE COURT: All right. But you're without portfolio,  
9 so --

10                  MR. BECKER: Yes, it's not mine.

11                  THE COURT: Mr. Lee, any objection to it?

12                  MR. LEE: No, your Honor.

13                  THE COURT: Mr. Dinnerstein?

14                  MR. DINNERSTEIN: No, I don't have any objection to  
15 that.

16                  MR. MIEDEL: No objection.

17                  THE COURT: All right.

18                  MR. BECKER: Your Honor, I do think that this  
19 change -- I don't know how other counsel feels -- might be  
20 important enough that the court --

21                  THE COURT: I'm going to do a call. It's a  
22 substantive change. I'm going to bring it to their attention.

23                  Now I hesitate to burden the record with about a dozen  
24 very minor literally typographical errors like, for example, on  
25 page 76, line 2, the name Joshua Meregildo appeared twice.

Cbs1mer7

1 Obviously I only read it once. I'm deleting it. I don't find  
2 any of these changes to be of any consequence, but let me just  
3 shout them out.

4 (Continued on next page)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CBS3MER8

Jury Charge

1 THE COURT: Page 33, line 19, I'm deleting the second  
2 time the word "charged" is referenced on that line.

3 Page 44, line 11, I'm changing "a" to "the."

4 Page 76, line 2, I deleted "Joshua Meregildo."

5 Page 77, line 6, I changed the language "to attempted  
6 to murder members."

7 Page 83, line 5, I changed "in" to "is."

8 Page 89, line 6, I changed to "instructed you on the  
9 meaning."

10 Page 90, line 6, I changed to "count three, the murder  
11 of members" to make consistent.

12 Page 98, line 13, I deleted "or person" to make it  
13 consistent. And line 22 I changed to "17."

14 Page 101, lines 7 to 8 I added "September 13, 2010" to  
15 count 10, and changed "2010" to "2011" for count 12.

16 Page 108, line 13, I changed "killing" to "shooting."

17 Page 110, line 12, I changed "20" to "21."

18 And page 115, line 7, which we've already discussed, I  
19 added "or aided and abetted."

20 Now, Mr. Dinnerstein, you had something.

21 MR. DINNERSTEIN: Yes, I have. There is actually an  
22 error in the verdict sheet on count 21.

23 THE COURT: All right. Hang on.

24 MR. DINNERSTEIN: Page nine of the verdict sheet.

25 THE COURT: Thank you. Go ahead.

CBS3MER8

Jury Charge

1                   MR. DINNERSTEIN: Your Honor, the beginning is  
2 correct. It talks about in furtherance of the conspiracy to  
3 murder members of the Maria Lopez Crew. But in the body of  
4 that it talks about the assault and attempted murder of the  
5 Jing Bao Jiang in aid of racketeering as charged in count 11.  
6 He's actually charged in count 12, and I believe that the body  
7 of that should actually make reference to what it says at the  
8 beginning, which is the conspiracy to murder members of the  
9 Maria Lopez Crew.

10                  MS. HELLER: We certainly agree.

11                  THE COURT: I'm changing that.

12                  MR. BECKER: Your Honor --

13                  THE COURT: That's all in the better late than never  
14 department.

15                  MR. BECKER: Page 110, line 12, was count 20 changed  
16 to count 21?

17                  THE COURT: Yes.

18                  MR. BECKER: Thank you.

19                  THE COURT: Anything else? So the only thing that I'm  
20 going to review with them, and I'll review it three separate  
21 times for the three defendants, is that concluding line on the  
22 third element under in count one of the racketeering charge for  
23 each defendant. And I'm not going to call out to them the  
24 changes in the jury verdict sheet unless somebody thinks it's  
25 necessary. Seeing no one --

CBS3MER8

Jury Charge

1 MR. DINNERSTEIN: I don't think so.

2 THE COURT: -- rising to their feet. All right.

3 Let's bring in the jury.

4 MS. HELLER: So the Court knows, we did start revising  
5 the exhibit list during lunch, but we have not finished it.  
6 There were a lot of things to change. We want to be careful.

7 (Jury present)

8 THE COURT: All right, members of the jury, we're  
9 almost there. I want to turn your attention back to page 129  
10 of the charge. And specifically, I want to amplify and  
11 supplement my instruction that begins at line 18. It will read  
12 in the charge that's sent in to you:

13 The government has satisfied its burden against Joshua  
14 Meregildo with respect to this element, if you find that he  
15 committed two of these racketeering acts, and that those acts  
16 were part of a pattern of racketeering activity as I have  
17 previously defined that term.

18 The same change, members of the jury, I will be making  
19 on the next page, with respect to my instruction to you  
20 regarding Melvin Colon. Specifically, I will tell you that the  
21 government has satisfied its burden against Melvin Colon with  
22 respect to this element if you find that he committed two of  
23 these racketeering acts, and that those acts were part of a  
24 pattern of racketeering activity as I've previously defined  
25 that term.

CBS3MER8

Jury Charge

1                   And I am also amplifying the charge with respect to  
2 the defendant Earl Pierce on page 131, at line 18. It will  
3 reads as follows: The government has satisfied its burden  
4 against Earl Pierce with respect to this element if you find  
5 that he committed two of these racketeering acts, and that  
6 those acts were part of a pattern of racketeering activity as  
7 I've previously defined that term.

8                   Now, I've also made one or two more corrections in the  
9 jury verdict sheet. I'm not going to discuss them, it will be  
10 self-evident to you when a verdict sheet is sent in to you.

11                  Now, in a moment I'm going to be sending you into the  
12 jury room to begin your deliberations. A little while after  
13 that, I will send some copies of the jury charge to you as  
14 they've been changed, I will send some copies of the verdict  
15 sheet to you as it has been changed.

16                  It is important that at such time as you reach a  
17 verdict in this case, that your foreperson come in to court  
18 with only one verdict sheet. Because if anyone else brings a  
19 verdict sheet in, then I'm going to have to ask a number of  
20 questions about that. And given the length of the verdict  
21 sheet, that will take some time. So, only the foreperson  
22 should bring a verdict sheet into the courtroom.

23                  Now, at such time as you reach a verdict, you should  
24 send a note signed by your foreperson to me through the marshal  
25 telling me that you've reached a verdict. And then I will

CBS3MER8

Jury Charge

1 bring you into the courtroom and we will address your verdict  
2 and you will bring the verdict sheet with you.

3 You will have as much time as you need to deliberate  
4 in this case. I ask that you deliberate today until at least  
5 5 o'clock. If you wish to work longer, you may. If you do not  
6 reach a verdict, you'll return tomorrow, and as soon as you're  
7 all here, you will begin your deliberations again.

8 We will be in a position to receive notes from you  
9 whenever you feel the need to communicate with us. I will just  
10 tell you that between the hour of one and two, we will not be  
11 in a position to receive notes from you because, like you, we  
12 will be having our luncheon recess. You will be having your  
13 lunches together in the jury room, but we will be taking our  
14 luncheon recess.

15 So, at this time, I'm going to direct that the oath be  
16 administered to the marshal.

17 (Marshal sworn)

18 THE COURT: All right. We will send in shortly to you  
19 copies of the charge, copies of the redacted -- a copy of the  
20 redacted indictment, copies of the verdict sheet, a list of  
21 exhibits received in evidence, and we will wait to hear from  
22 you. Please recess the jury.

23 Leave your binders -- I'm going to ask the two  
24 alternates remain in the jury box.

25 (Jury begins deliberations. Time noted: 3:30 p.m.)

CBS3MER8

Deliberations

1                   THE COURT: Well, you probably may think that your  
2 work is done. But it's not. We never know what's going to  
3 happen in the course of a jury deliberation. So, I am going to  
4 continue my instruction to both of you that you not discuss  
5 this case with anyone, because there may come a time that we  
6 need to press you into service in the jury room in this case.

7                   I'm going to ask Juror No. 13 to report to the  
8 courthouse tomorrow morning by 10 o'clock. But you won't be  
9 coming to the 20th floor, you will be coming to my chambers and  
10 my deputy will give you some instructions on that.

11                  And Juror No. 14, you can go to work tomorrow, but we  
12 want to have your phone numbers because we might need you. And  
13 we will continue to need to know how to reach you until such  
14 time as I decide that we no longer need you in the case.

15                  But for now, neither of you is to have any further  
16 contact with the jurors who are deliberating. I'm sure that  
17 friendships develop, don't speak to them. As soon as there is  
18 a verdict in this case, we will be communicating with you to  
19 let you know about it, and then you'll be free to talk to them  
20 or anyone else. But for now I'm going to keep you under all of  
21 the restrictions that we've previously imposed on you.

22                  And Juror No. 13, you'll report tomorrow morning. My  
23 deputy will escort you to the jury room so that you can get  
24 your personal belongings today, and you're free to go home for  
25 the balance of the day.

CBS3MER8

Deliberations

1           If I don't see either of you, I will see Juror No. 13  
2 tomorrow, but if I don't see you again, Juror No. 14, and only  
3 communicate by phone, I want to thank you for your diligence  
4 and your service in this case. The Court and all of the  
5 parties appreciate what this jury has been doing over what has  
6 turned into an extended trial.

7           A JUROR: You're welcome.

8           THE COURT: At this time, please recess the  
9 alternates.

10           (Alternate jurors excused)

11           THE COURT: Are there any other issues that counsel  
12 want to raise at this moment?

13           MS. HELLER: Just a question of procedure. In terms  
14 of should we just wait in terms of what time we leave, just  
15 await word from Mr. Gosnell, or does the Court like everyone to  
16 come back into the courtroom at a certain time?

17           THE COURT: I'm going to bring the jury back into the  
18 courtroom at 5 o'clock unless I hear from them that they want  
19 to work longer. And I expect, because this is not California,  
20 that counsel will be here.

21           MS. HELLER: Yes.

22           THE COURT: Don't go far.

23           MS. HELLER: We'll certainly be here at 5 o'clock. In  
24 terms of the morning, does your Honor like us to report at  
25 10 o'clock to the courtroom or not?

CBS3MER8

Deliberations

1 THE COURT: How else -- yes. I do.

2 MS. HELLER: Okay.

3 THE COURT: I expect yes.

4 MR. BECKER: Your Honor, I know your Honor stated and  
5 certainly the Court's intention that the jury will have as much  
6 time as it needs. I don't doubt that for a second. I'm  
7 wondering though if the jury has a sense in their mind, for  
8 example, assuming there is no verdict by Friday, whether that's  
9 a regular day. If perhaps you could just --

10 THE COURT: I'm going to discuss it with them at  
11 5 o'clock. But I --

12 MR. BECKER: Very well.

13 THE COURT: Okay? Anything else? We'll make the  
14 corrections but we need the exhibit list and then I'll conduct  
15 a very brief proceeding with counsel and parties to get the  
16 exhibit list in to the jury room.

17 MS. HELLER: I think we can finish it in 20 minutes.

18 THE COURT: Great. We'll plan on reconvening in about  
19 20 minutes. I should be able to get the jury verdict sheet  
20 turned around by that time as well. The defendants may be  
21 excused from the courtroom.

22 (Recess pending verdict)

23 (in open court; jury not present. Time noted:  
24 4:25 p.m.)

25 THE COURT: Did my deputy circulate to you a revised

CBS3MER8

Deliberations

1 verdict sheet?

2 MR. FEE: He did, your Honor. All counsel now have a  
3 copy.

4 THE COURT: All right.

5 MR. FEE: Your Honor, the exhibit list Ms. Heller is  
6 bringing up as we speak. And we'll distribute a copy as soon  
7 as she arrives.

8 THE COURT: What about the redacted indictment?

9 MR. FEE: We gave copies to Mr. Gosnell. I'm not sure  
10 where they are right now.

11 THE COURT: All right.

12 MR. FEE: I believe they're right there.

13 THE COURT: Are there any exceptions to the jury  
14 verdict sheet as revised?

15 MR. FEE: May we have just one moment, your Honor?  
16 Thank you.

17 (Pause)

18 THE COURT: As discussed, revisions have been made in  
19 the charge. I'm going to mark the charge as Court Exhibit 1.  
20 And I'm going to send two copies in to the -- I'm going to send  
21 one copy into the jury room at this point.

22 I received from the government a master exhibit list.  
23 Is this master exhibit list acceptable to all of the parties to  
24 send in to the jury room for them to have during their  
25 deliberations.

CBS3MER8

Deliberations

1 MR. BECKER: Your Honor, it is not acceptable to  
2 Mr. Miranda and I should note that I received it --

3 THE COURT: Okay. I understand when you received it.  
4 Just tell me what's not acceptable.

5 MR. BECKER: Yes, your Honor. What I was going to say  
6 is that because I just received it when your Honor did, I  
7 haven't had a chance to review it. But what I know is not  
8 acceptable because we've had discussions, I had a discussion  
9 with Mr. Fee --

10 THE COURT: I'm still waiting to know what it is.

11 MR. BECKER: 16.1 to 16.6 exhibit on the defense  
12 exhibit, it is the last page, your Honor. And it identifies  
13 the photographs that I introduced of Lillian Kanote,  
14 Mr. Miranda's aunt, who testified that that was her residence.  
15 And I want the photos to be identified as such. If the  
16 government -- the government photographs, the way it identifies  
17 them is by reference to the person or persons that it's  
18 relevant to. So for example, with respect --

19 THE COURT: Okay. Why can't you change the  
20 description?

21 MR. FEE: Your Honor, we oppose putting something in  
22 there that relates to a disputed issue like Miranda's  
23 residence. We are afraid the jury is going to believe it is a  
24 concession that's where Nolbert Miranda lived. Even  
25 Ms. Kanote's testimony said he didn't live there all the time.

CBS3MER8

Deliberations

1 THE COURT: What about Kanote's residence?

2 MR. FEE: That's fine with us, your Honor.

3 MR. BECKER: Your Honor, her legal name when she was  
4 sworn in was Lillian Miranda Kanote. That is her legal name.  
5 The government, when they described photos they talk about --

6 THE COURT: Make it Lillian Miranda Kanote's  
7 residence.

8 MR. BECKER: Thank you.

9 THE COURT: Or apartment.

10 MR. BECKER: And I have no objection to it saying 2950  
11 Park Avenue, which is what it was. But it should have her name  
12 as well.

13 THE COURT: What else?

14 MR. LEE: Your Honor, Exhibit 251, I believe that is  
15 not clear or accurate. It is a list created by Special Agent  
16 Castillo.

17 THE COURT: Okay. All right. I tell you what. You  
18 all can sit and confer about all of this. Because I'm not  
19 going to chop chicken liver with you. I'm not sending in an  
20 exhibit list right now. I'm sending in the jury charge. Any  
21 objection to sending in the redacted indictment? Have all  
22 counsel reviewed it? Mr. Lee, any objection?

23 MR. LEE: None.

24 THE COURT: Mr. Dinnerstein?

25 MR. DINNERSTEIN: No objection.

CBS3MER8

Deliberations

1 MR. MIEDEL: No objection.

2 THE COURT: Mr. Becker?

3 MR. BECKER: Your Honor, I don't believe I was given  
4 it.

5 THE COURT: No. Here. If we're going to play that,  
6 take a look at it right now.

7 MR. BECKER: I'm not playing. You asked me a  
8 question, I answered you, your Honor.

9 THE COURT: What about the jury verdict sheet. Any  
10 objection?

11 MR. FEE: No objection, your Honor.

12 THE COURT: Any objection, Mr. Lee?

13 MR. LEE: No, your Honor.

14 THE COURT: Mr. Dinnerstein?

15 MR. DINNERSTEIN: No objection.

16 MR. MIEDEL: No objection.

17 MR. BECKER: No objection to the jury verdict sheet.

18 THE COURT: That's good. I'm sending the jury charge  
19 and the verdict sheet into the jury room right now. The charge  
20 is marked as Court Exhibit 1.

21 MR. BECKER: Having seen the superseding indictment as  
22 redacted, I have no objection to that either.

23 THE COURT: All right. Hold on, Mr. Deputy. Send a  
24 copy of the redacted indictment in. I'll move this along.

25 Now, you can confer to your heart's content on the

CBS3MER8

Deliberations

1 exhibit list. I've received a note from the jury which I'll  
2 mark as Court Exhibit 2. It reads as follows: We've selected  
3 a foreperson, Allison Ramos, Juror No. 4. And, we're leaving  
4 at 5 p.m. today. And it's signed by Ms. Ramos as the  
5 foreperson.

6 I'm marking this as Court Exhibit 2. Show it to  
7 counsel. I will bring the jury out at 5 o'clock if I don't  
8 hear from them further and give them some instructions.

9 So the defendants should be returned to the courtroom  
10 promptly at 5 o'clock so that they can see the jury and the  
11 jury can see them and I'll give instructions. And all counsel  
12 are directed to remain in the courtroom and confer until you've  
13 agreed on the descriptions for the exhibit list. No one is to  
14 leave.

15 So at this point the defendants can be escorted from  
16 the courtroom. Okay. Meet and confer because we're going to  
17 get a verdict before Christmas. I know that apparently you  
18 folks have different views about what you want to do. But I'm  
19 not going to tolerate it.

20 (Recess pending verdict)

21 (In open court; jury not present. Time noted:  
22 5 p.m.)

23 THE COURT: Let's bring in the jury. I've received a  
24 note from the jury that we'll mark as Court Exhibit 3. It  
25 reads as follows: Can we please have the following: A white

CBS3MER8

Deliberations

1 board, list of evidence, and two or more jury charge binders.

2 Signed by the foreperson.

3 Mark it as Court Exhibit 3. We'll show it to counsel  
4 after I send the jury home. Bring the jury in.

5 (Jury present)

6 THE COURT: Good evening, members of the jury. We  
7 know that you've been hard at work, that you've elected a  
8 foreperson, and I received another note from you that we've  
9 marked as a court exhibit and you will have those supplies and  
10 the exhibit list in the jury room waiting for you tomorrow.  
11 I'm going to send you home now for the evening.

12 Tomorrow, as soon as you are all together in the jury  
13 room, you'll send us the customary signal because we keep track  
14 of when juries are deliberating.

15 Remember, tomorrow morning when you arrive, don't have  
16 any discussion about the case until all of you are together in  
17 the jury room. Then you can begin your deliberations and we  
18 will await further communications from you tomorrow morning.  
19 Remember also that we will not be in a position to receive  
20 notes from you tomorrow between 1 and 2 p.m.

21 If you do not reach a verdict tomorrow and do not  
22 otherwise communicate with the Court about your intentions, I  
23 will bring you back into the courtroom as I'm doing this  
24 evening at 5 o'clock, give you some instructions and send you  
25 home. And you will return on Friday to resume your

CBS3MER8

Deliberations

1 deliberations. Because you are now a deliberating jury, I will  
2 expect that you will continue to deliberate on Friday until  
3 5 o'clock or such time as you reach a verdict. If you don't  
4 reach a verdict on Friday, then you'll return on Monday to  
5 continue your deliberations.

6 But for now, put this case out of your mind. I know I  
7 can say that; it may be difficult to do. But, put it out of  
8 your mind. It's been an intense couple of days here with  
9 closing arguments and my instructions on the law. Get rested  
10 and refreshed and come back tomorrow ready to resume your  
11 deliberations in the highest traditions of this court.

12 Keep an open mind, come to no conclusions, and don't  
13 discuss the case with anyone overnight. Have a safe trip home  
14 and a great evening. We'll see you all tomorrow morning.  
15 Please recess the jury.

16 (Jury excused)

17 THE COURT: First of all, show Court Exhibit 3 to  
18 counsel.

19 MR. DINNERSTEIN: Your Honor, that's the second note  
20 we got from them. So what's Court Exhibit 1?

21 THE COURT: The charge.

22 MR. DINNERSTEIN: Okay.

23 THE COURT: We will e-mail to counsel this evening the  
24 charge as it was finally configured. I've been handed a new  
25 master exhibit list. Have the parties reached agreement?

CBS3MER8

Deliberations

1 MS. HELLER: It's my understanding that we have, your  
2 Honor.

3 THE COURT: Have counsel reviewed this master exhibit  
4 list and do they consent to it being sent into the jury room  
5 tomorrow morning?

6 MR. LEE: Your Honor, I have. Joshua Meregildo has no  
7 objection to the master exhibit list.

8 MR. DINNERSTEIN: It's fine.

9 MR. MIEDEL: No objection.

10 MR. BECKER: Your Honor, we worked it out and there is  
11 no objection.

12 THE COURT: All right. We'll mark it as Court Exhibit  
13 4 and send it into the jury room. Given the jury's request in  
14 Court Exhibit 3, we'll see that they get a white board  
15 tomorrow, couple more copies of the charge, and they'll have  
16 the master exhibit list.

17 Are there any other issues that counsel want to raise  
18 this evening?

19 MS. HELLER: Just a question, your Honor. What time  
20 would you like us here tomorrow morning?

21 THE COURT: I think it's good to be here by 9:45. The  
22 jury has generally been early. If we get a note we'll be  
23 prepared to deal with it. Any other issues?

24 Obviously, this is the most painful part of any trial.  
25 Waiting, waiting for a jury verdict. I remember well, even

CBS3MER8

Deliberations

1 though it's a long time ago, but because it's so excruciating,  
2 I remember many a time waiting for a jury verdict. So, I do  
3 feel your pain and I still continue, even though I don't have a  
4 horse in the race, I'm always on edge waiting for a verdict.  
5 So we'll see what happens.

6 Whatever happens, I want to commend all counsel for  
7 their presentations. Both of the evidence and their arguments  
8 to the Court. Their letter applications, all of it, in my  
9 view, represented great advocacy on behalf of the parties'  
10 respective positions. And it seems that no stones were left  
11 unturned.

12 So, I'll see you all tomorrow morning. You probably  
13 hopefully will get a good night's sleep or at least a little  
14 rest. And we'll start afresh tomorrow.

15 All right? Have a good evening. The defendants can  
16 be escorted from the courtroom. I've got another matter on at  
17 5:30.

18 MS. HELLER: Thank you.

19 THE COURT: Have a good night.

20 (Adjourned until November 29, 2012, at 9:45 a.m.)